UNITED NATIONS
Office on Drugs and Crime

TRAVAUX PRÉPARATOIRES

of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

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Contents

Foreword

The present publication contains the *travaux préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and its three supplementary Protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air (resolution 55/25, annexes II and III, respectively) and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (resolution 55/255, annex).

The purpose of the publication is to track the progress of the negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, which was established by the General Assembly by its resolution 53/111 of 9 December 1998, with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to finalize the draft texts and submit them directly to the Assembly for adoption (resolution 54/126). It is intended to provide a comprehensive picture of the background of the Convention and its three Protocols and, by presenting the evolution of the texts, to provide the reader with an understanding of the issues confronted by the Ad Hoc Committee and the solutions it found. Thus, the publication is intended to provide a better, in-depth understanding of the Convention and its Protocols.

The Ad Hoc Committee began its work on 19 January 1999 and held 12 sessions. At its tenth session (Vienna, 17-28 July 2000), the Ad Hoc Committee approved the draft convention and decided to submit it to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999. At its eleventh session (Vienna, 2-28 October 2000), the Ad Hoc Committee approved the draft protocol to prevent, suppress and punish trafficking in persons, especially women and children, and the draft protocol against the smuggling of migrants by land, sea and air and decided to submit them to the General Assembly for adoption pursuant to the same resolution. At its twelfth session (Vienna, 26 February-2 March 2001), the Ad Hoc Committee approved the draft protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and decided to submit it to the Assembly for adoption pursuant to resolutions 54/126 and 55/25 of 15 November 2000.

The introduction to the present publication provides a historical account of the United Nations work and initiatives to strengthen international cooperation against organized crime. It includes a presentation of the preparatory work carried out prior to the establishment of the Ad Hoc Committee, which laid the foundations for the work of that body. Thus, the reader will find in chronological order detailed references to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime; the draft United Nations framework convention against organized transnational crime submitted by the Government of Poland to the General Assembly in October 1996; the work of the open-ended intergovernmental group of experts, established pursuant to General Assembly resolution 52/85 of 12 December 1997, at its meeting in Warsaw from 2 to 6 February 1998; the work of the informal group to assist the Chairman of the Ad Hoc Committee, especially at its meetings held in Rome on 17 and 18 July 1998 and in Vienna on 5 and 6 November 1998; the work of the informal preparatory meeting of the Ad Hoc Committee held in Buenos Aires from 28 August to 3 September 1998; and the work of the

Commission on Crime Prevention and Criminal Justice at its annual sessions, to the extent that they had a bearing on the preparatory process. For brevity's sake, initial drafts or working texts discussed during that preparatory stage are identified by their official symbols and not reproduced in full, except for those discussed during the informal preparatory meeting of the Ad Hoc Committee in Buenos Aires, which were used as negotiation texts at the early sessions of the Ad Hoc Committee and are therefore included in its official records.

The material contained in the present publication is divided into five parts. Part one presents the evolution of the text of the draft convention against transnational organized crime that was finally submitted by the Ad Hoc Committee to the General Assembly for consideration and action. It shows the successive revisions of the text of the draft convention for each article separately, as reflected in the in-session documents of the Ad Hoc Committee, with appropriate adjustment of the accompanying footnotes, where necessary. Proposals and contributions of Governments are also reflected, to the extent that they became part of the negotiation process and contributed to the finalization of the text. Additional notes by the Secretariat have been inserted where necessary to provide clarification and ensure continuity and consistency of the material presented.

The basic structure of the presentation of each article is uniform. Each chapter on a specific provision is divided into sections, of which the first is devoted to the negotiation texts showing the evolution of the text of the article until its finalization. The second section presents the approved text of the provision as adopted by the General Assembly and, where interpretative notes on the content of the provision were approved by the Ad Hoc Committee, a third section is added containing those notes. The reader will find a fourth section in cases where there was a need to present additional information or proposals made during the negotiation process that could not be included in any of the other sections (e.g. proposed lists of offences for the delineation of the scope of application of the Convention for inclusion in article 3).

Parts two, three and four of the *travaux préparatoires* deal with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, respectively, and follow the same pattern of presentation.

It should be noted that specific provisions that were also discussed during the negotiation process but were eventually deleted are presented either separately under specific chapters on "Deleted articles" or in connection with finally approved articles of the instruments when they were interrelated.

The fifth part of the *travaux préparatoires* contains a similar outline of the negotiations that led to the finalization of the text of the resolutions by which the General Assembly adopted the Convention and the Protocols—resolutions 55/25 and 55/255.

The resources available to the Ad Hoc Committee were limited. Thus, it did not benefit from the availability of summary records, unlike similar bodies such as the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which had summary records of its plenary meetings and the meetings of its relevant committees. In order to compensate for this, the Secretariat tried to reflect the deliberations and positions of Member States in the documentation of each session of the Ad Hoc Committee through the use of extensive and detailed footnotes to the texts under negotiation.

The CD-ROM that accompanies the present publication contains not only an electronic version of the contents of this volume, but also a set of glossaries of terms, which were developed as a linguistic tool to facilitate the identification of equivalent terms of each entry in the official languages of the United Nations.

Introduction

I. United Nations efforts to strengthen international cooperation against organized crime: the early years

The United Nations, because of its wide-ranging mandate and international constituency, has always provided the most appropriate forum for promoting a common understanding of and global action to combat transnational organized crime. Thus, the work and initiatives of the Organization in strengthening international cooperation against organized crime date back 30 years. The issue has been discussed and assessed at several of the quinquennial United Nations congresses on crime prevention and criminal justice. That continuing debate—and its results—reflects the changing perceptions and comprehension of the threats posed by organized crime over several decades; it can also be viewed as a sustained course in the direction of raising awareness among policymakers and decision makers about the problem and the most effective ways to tackle it.

The first United Nations forum where issues related to organized crime were examined and discussed was the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva from 1 to 12 September 1975.[1] Under an agenda item entitled "Changes in forms and dimensions of criminality—transnational and national", the Fifth Congress focused on crime as business at the national and transnational levels, paying particular attention to organized crime, white-collar crime and corruption. It was agreed that the economic and social consequences of "crime as business" were typically much greater than the consequences of traditional forms of interpersonal violence and crime against property, thus posing a more serious threat to society and national economies. In addition, while white-collar crime, organized crime and corruption were a serious problem in many developed countries, the national welfare and economic development of the entire society in developing countries were found to be drastically affected by such criminal conduct as bribery, price-fixing, smuggling and currency offences.[2]

Recognizing that those types of crime had been relatively neglected by criminologists and that the definitions used were often vague and ambiguous, the Fifth Congress indicated that the expression "crime as business" referred to heterogeneous groups of crimes characterized by specific features, such as the underlying objective of economic gain and the involvement of some form of commerce, industry or trade; the involvement of some form of organization in the sense of a set or system of relatively formal arrangements between the various parties committing the illegal acts; the use or misuse of legitimate techniques of business and industry; and the high social status and/or political power of the persons involved in committing the crimes concerned.[3] Organized crime, in particular, was understood to be

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[1]With regard to organized crime as a standing agenda item of the United Nations congresses in recent years, see M. Cherif Bassiouni and Eduardo Vetere, eds., *Organized Crime: a Compilation of U.N. Documents, 1975-1998*, (Ardsley, New York, Transnational Publishers, 1998), introduction, pp. xvii et seq.; see also the report of the Secretary-General of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, entitled "Fifty years of United Nations congresses on crime prevention and criminal justice: past accomplishments and future prospects" (A/CONF.203/15).

[2]See *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975: report prepared by the Secretariat* (United Nations publication, Sales No. E.76.IV.2 and corrigendum), chap. II, para. 51.

[3]Ibid., para. 52.

accomplished through ruthless disregard for any law, frequently in connection with political corruption, and was considered a large-scale and complex criminal activity carried on by groups of persons, however loosely or tightly organized, for the enrichment of those participating and at the expense of the community and its members (A/CONF.56/3, para. 17).

In its recommendation, the Fifth Congress called for more information about economic criminality and for special studies on such issues as corruption and smuggling, in view of the extremely detrimental effect of such practices on national economies and international trade, in particular in developing countries. It also called for the development of legislation against national and transnational abuses of economic power in the exercise of commercial activity by national and transnational enterprises; the encouragement of greater participation of shareholders in the affairs of major corporations or of workers in public enterprises; and the establishment of national securities and exchange commissions or other administrative bodies and possibly the establishment of a similar body at the international level.[4]

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Caracas from 25 August to 5 September 1980, considered the issue under an agenda item entitled "Crime and the abuse of power: offences and offenders beyond the reach of the law", adding new elements to the international perception of organized crime. In that context, consideration was given, inter alia, to crimes that law enforcement agencies were relatively powerless to address because of the high economic or political status of their perpetrators, or because the circumstances under which they had been committed were such as to decrease the likelihood of their being reported and prosecuted.[5]

The Sixth Congress agreed on the urgent need to gather and exchange information on the various aspects of offences relating to the abuse of power and the offenders at the global and regional levels; to reform the respective national laws, where necessary, so as to cover adequately those offences; to broaden and improve the machinery for combating illegal abuses of power; to conduct research on the aetiology of those offences, the typology of the offenders, patterns, trends and dynamics of such acts, as well as the measures required to contain them; and to strengthen international cooperation in policy formulation and the implementation of effective action strategies, particularly as regards economic crime.[6]

By the time the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Milan, from 26 August to 6 September 1985, it was becoming more and more evident that the escalating activities of organized crime were posing a serious threat on a global scale. It was recognized, in particular, as a new dimension of criminality that organized crime had acquired an unprecedented geographical extension and international coordination, as well as an effective diversification into all profitable criminal activities (A/CONF.121/20 and Corr.1, para. 15). Under an agenda item entitled "New dimensions of criminality and crime prevention in the context of development: challenges for the future", participants at the Seventh Congress emphasized that multiple illicit operations carried out by international criminal networks represented a major challenge to national law enforcement and to international cooperation and that national boundaries no longer constituted an effective barrier against those criminal activities.[7]

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[4]Ibid., chap. I, para. 8.

[5]See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. IV, para. 159.

[6]Ibid., chap. I, sect. C., para. 5.

[7]See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. IV, sect. A, para. 66.

Recognizing the international dimensions of crime and the need for a concerted response on the part of the international community, the Seventh Congress adopted the Milan Plan of Action,[8] subsequently approved by the General Assembly in its resolution 40/32 of 29 November 1985, in which it identified as an imperative need to launch a major effort to control and eventually eradicate the destructive phenomena of illicit drug traffic and abuse and of organized crime, both of which disrupt and destabilize societies.[9] In addition, it foresaw a significant role for the United Nations in facilitating the exchange of information and experiences between Member States with a view to improving criminal justice systems and enhancing their responsiveness to changing conditions and requirements in society and to the new dimension of crime and criminality.[10]

Furthermore, the Seventh Congress adopted resolution 1, entitled "Organized crime", in which it called upon Member States to intensify their efforts to combat more effectively organized crime at the national level, including consideration, subject to safeguards and the maintenance of basic rights under ordinary legal procedures and in conformity with international human rights standards, of the following measures: the modernizing of national criminal laws and procedures, including measures to introduce new offences directed at novel and sophisticated forms of criminal activity, provide for the forfeiture of illegally acquired assets, facilitate the obtaining of evidence abroad for use in national criminal proceedings and modernize national laws relating to extradition; the strengthening of law enforcement authorities; the establishment of national institutions, such as national crime authorities or commissions, with appropriate powers, to investigate and obtain evidence for the prosecution of those centrally involved in organized criminal activity; and the review or adoption of laws relating to taxation, the abuse of bank secrecy and gaming houses in order to ensure that they were adequate to assist in the fight against organized crime and, in particular, the transfer of funds or the proceeds of such crime across national boundaries; and requested the Committee on Crime Prevention and Control to develop a comprehensive framework of guidelines and standards that would assist Governments in the development of measures to deal with organized crime at the national, regional and international levels.[11] The Congress also adopted resolution 2, entitled "Struggle against illicit drug trafficking".[12]

Along with the advances made at the quinquennial congresses, another milestone on the path to coordinated international action against transnational crime was the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[13] Under that legally binding instrument, States parties committed themselves to combat one of the most lucrative manifestations of transnational organized crime, international drug trafficking, by, inter alia, criminalizing laundering of the proceeds of drug trafficking and strengthening international cooperation, in particular in the field of extradition and mutual legal assistance.

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, considered issues related to organized crime under an agenda item entitled "Effective national and international action against organized crime and terrorist criminal activities". The Eighth Congress examined the problem of organized transnational crime in the light of new historic develop-

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[8]Ibid., chap. I, sect. A.

[9]Ibid., para. 5 *(g)*.

[10]Ibid., para. 5 *(h)*.

[11]Ibid., sect. E, resolution 1.

[12]Ibid., resolution 2.

[13]United Nations, *Treaty Series*, vol. 1582, No. 27627.

ments. The rapid increase in the number of independent countries, together with the growing expansion of criminal activities beyond national borders, had created the need for new international institutions that could introduce a measure of order and enhance the effectiveness of crime prevention efforts. In that connection, it was indicated in particular that a most alarming development that had to be addressed was the insidious penetration of legitimate business by organized crime in order to invest the proceeds of crime, to establish a clean facade for criminal operations and to reduce risk by diversifying investments. It was further stressed that, in order to counteract that trend, it was necessary to devise a variety of measures to effectively prevent such infiltrations.

On the recommendation of the Eighth Congress, the General Assembly made a substantive step towards strengthening international cooperation by adopting the Model Treaty on Extradition (Assembly resolutions 45/116, annex, and 52/88, annex), the Model Treaty on Mutual Assistance in Criminal Matters (resolutions 45/117, annex, and 53/112, annex I), the Model Treaty on the Transfer of Proceedings in Criminal Matters (resolution 45/118, annex) and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (resolution 45/119, annex).

In its resolution 24, the Eighth Congress also adopted a set of guidelines for the prevention and control of organized crime covering domestic aspects of preventive strategies, criminal legislation, criminal investigation and law enforcement and criminal justice administration, as well as international cooperation issues.[14] The resolution was welcomed by the General Assembly in its resolution 45/121 of 14 December 1990. In its resolution 45/123, also of 14 December 1990, the Assembly urged Member States to implement the guidelines and invited them to make available to the Secretary-General their national legislation against organized crime and money-laundering.

The Eighth Congress also marked the beginning of a new era for the United Nations Crime Prevention and Criminal Justice Programme, because, on its recommendation, the Secretary-General convened the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, which was held in Paris from 21 to 23 November 1991 (see A/46/703 and Corr.1). The Meeting drew up a statement of principles and programme of action of the United Nations crime prevention and criminal justice programme, which the General Assembly approved in its resolution 46/152 of 18 December 1991. In that resolution the Assembly determined that the strengthened programme would focus its activities on specific areas of priority and direct its energies towards providing timely and practical assistance to States at their request. Action against organized crime figured prominently among the areas of priority attention for the new programme. At the institutional level, the Assembly decided that the Committee on Crime Prevention and Control, the governing body of the programme composed of experts nominated by Governments but serving in their individual capacity, would cease to exist. In its place, it established the Commission on Crime Prevention and Criminal Justice, a functional commission of the Economic and Social Council, composed of representatives of 40 Governments, thus ensuring direct governmental involvement in both decision-making and oversight of the programme's activities.

On the recommendation of the Commission on Crime Prevention and Criminal Justice at its first session, from 21 to 30 April 1992, the Economic and Social Council adopted resolution 1992/22 of 30 July 1992, in which it determined that one of the priority themes

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[14]See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C, resolution 24, annex.

that should guide the work of the Commission and the United Nations Crime Prevention and Criminal Justice Programme would relate to national and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment.

The Council also adopted resolution 1992/23 of 30 July 1992, in which it took note of the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held in Smolenice, Czechoslovakia, from 27 to 31 May 1991, and the practical measures against organized crime, formulated by the International Seminar on Organized Crime, held in Suzdal, Russian Federation, from 21 to 25 October 1991 (annexes I and II); and requested the Secretary-General to continue the analysis of information on the impact of organized criminal activities upon society at large, as well as on legislative measures and the promotion of international cooperation aimed at controlling organized crime, with special emphasis on economic crimes and the laundering of illicit funds.

II. From Naples to the establishment of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime: an outline of United Nations initiatives paving the way to the United Nations Convention against Transnational Organized Crime

The direct governmental involvement in setting the agenda for the United Nations Crime Prevention and Criminal Justice Programme, ensured through the establishment of the Commission on Crime Prevention and Criminal Justice, helped give new impetus to the call for international action against organized crime, which had been identified as a key component of success against organized crime and was found to be sorely missing at the time.

In 1993, on the recommendation of the Commission on Crime Prevention and Criminal Justice at its second session, from 13 to 23 April 1993, the Economic and Social Council adopted resolution 1993/29 of 27 July 1993, in which it requested the Secretary-General to organize a world ministerial conference on organized transnational crime and accepted the offer of the Government of Italy to act as host for that Conference; and identified as one of the objectives of the Conference the intention to consider whether it would be feasible to elaborate international instruments, including conventions, against organized transnational crime.

In preparation for the Conference, the Government of Italy, in cooperation with the Fondazione Giovanni e Francesca Falcone, organized in Palermo, Italy, from 10 to 12 October 1994, an informal meeting of members of the Commission on Crime Prevention and Criminal Justice and representatives of other interested countries to draft the working documents that would constitute the substantive platform for consideration by the Conference.

Furthermore, pursuant to Economic and Social Council resolution 1993/30 of 27 July 1993, the Government of Italy, in cooperation with the International Scientific and Professional Advisory Council and under the auspices of the United Nations, organized the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: Global Approach, held in Courmayeur, Italy, from 18 to 20 June 1994 (see E/CONF.88/7). The Conference examined the numerous issues related to money-laundering and found that there was an urgent need to establish an effective and comprehensive global network to combat money-laundering.

In setting objectives for the world ministerial conference, the Economic and Social Council in its resolution 1994/12 of 25 July 1994, recommended that the conference take into consideration the conclusions and recommendations reached at the Courmayeur meeting; noted the discussion on issues related to organized transnational crime held at the third session of the Commission on Crime Prevention and Criminal Justice from 26 April to 6 May 1994[15] and the discussion document submitted to the Commission at that session by the Government of Italy and annexed to the resolution, which contained useful elements for the identification of specific matters to be used as a basis for the substantive discussion of the objectives of the world ministerial conference.

The World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy, from 21 to 23 November 1994 (see A/49/748), attracted the highest number of participating States, as well as the highest level of representation, of any crime prevention and criminal justice conference of the United Nations. It was attended by over 2,000 participants and delegations from 142 States (86 of them at the ministerial level, while others were represented by their Heads of State or Government), in addition to intergovernmental and non-governmental organizations.

In the general debate during the Conference, a range of views were expressed concerning the feasibility of elaborating an international convention against organized transnational crime. Some countries were of the view that Governments should first concentrate on elaborating guidelines designed to offer options acceptable to all States, which could be a starting point to make the system of each country as similar as possible on a step-by-step basis. Other delegations emphasized the importance of having realistic goals and objectives, achievable within the available resources, and that the usefulness of such a convention should be balanced against the resources required to elaborate and administer it. Some delegates counselled caution, noting that the United Nations should not take on additional tasks, unless it had the resources to fulfil them. Moreover, there should be a consensus among the members of the international community on what action was necessary to combat organized transnational crime and on whether any measures were required other than those already taken at the national level. In addition, the modalities and related standards and norms that were already available to Member States, such as the United Nations model treaties, should be fully applied before further initiatives were taken. It was also noted that not all States had ratified the 1988 Convention and that, therefore, it might be premature to elaborate another similar convention. In that connection, the likely difficulties involved in agreeing on a convention, given the differences in legal systems and practices in various countries, should also be considered.

Other participants supported the proposal for a convention on organized transnational crime, contending that it would not be premature to undertake such a task. They stressed that it was necessary to begin elaborating the convention as soon as possible, given the work involved and the exponential growth of organized transnational crime and that any delay would only benefit organized transnational criminal groups. It was noted that, when the 1988 Convention was being elaborated, some of the measures appeared novel to many States, such as those relating to money-laundering; however, those measures had since become widely accepted. Some delegations felt that a convention against organized transnational crime would have a similar effect. Therefore, the 1988 Convention should indeed serve as a useful model for the development of a new instrument.

It was suggested that the Commission on Crime Prevention and Criminal Justice should examine the elaboration of such an instrument and might wish to consider, at its fourth

[15]See *Official Records of the Economic and Social Council, 1994, Supplement No. 11* (E/1994/31), chap. II.

session, assigning that task to a group of experts. It was also suggested that such a convention could, among other things, make participation in Mafia-like organizations a criminal offence; make engagement in preparatory acts linked to organized crime a criminal offence; make individuals criminally liable for the action of their group; provide for special investigation powers; and include measures for the protection of witnesses. It was pointed out, finally, that any measures in such a convention should be consistent with national constitutions and the due observance of human rights and that the United Nations Crime Prevention and Criminal Justice Programme should be the focus of endeavours and strategies connected with any convention against organized transnational crime.

The Conference unanimously adopted the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I.A.), in which it emphasized the need for urgent global action against organized transnational crime, focusing on the structural characteristics and modus operandi of criminal organizations; and called upon States to take into consideration a series of characteristic features of organized crime, such as group organization to commit crime; hierarchical links or personal relationships which permitted leaders to control the group; violence, intimidation and corruption used to earn profits or control territories or markets; laundering of illicit proceeds both in furtherance of criminal activity and to infiltrate the legitimate economy; the potential for expansion into any new activities and beyond national borders; and cooperation with other organized transnational criminal groups.

In the Declaration, the Conference also called upon States to consider the further development of international instruments with a view to promoting closer alignment or compatibility of their legislation, as well as to consider reliable evidence-gathering techniques, such as electronic surveillance, undercover operations and controlled delivery, when so contemplated in national law, with full respect for internationally recognized human rights and fundamental freedoms, in particular the right of privacy, and subject to judicial approval or supervision as appropriate.

Special attention was paid to the need for Member States to ensure that they had in place the basic components of a functional system of international cooperation in order to address effectively the ability of organized transnational crime to shift and expand its activities from country to country. Equal attention was given to the need to strengthen technical cooperation activities to assist developing countries and countries with economies in transition in enhancing the capacity of their criminal justice systems.

The Conference further stressed that Member States should focus their efforts on the prevention and control of money-laundering and on the control of proceeds of crime by adopting legislative measures for the confiscation of illicit proceeds, including asset forfeiture, as well as ensuring the availability of provisional arrangements, such as the freezing or seizing of assets, always with due respect for the interests of bona fide third parties. The adoption of legislative and regulatory measures in order to promote effective money-laundering control and international cooperation, including measures aiming at limiting financial secrecy to that effect, was also emphasized.

The Conference further stressed the need for the international community to arrive at a generally agreed concept of organized crime as a basis for more compatible national responses and more effective international cooperation. In that context, the Conference requested the Commission on Crime Prevention and Criminal Justice to initiate the process of requesting the views of Governments on the impact of a convention or conventions against organized transnational crime and on the issues that could be covered therein.

In its resolution 49/159 of 23 December 1994, the General Assembly approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and urged States to implement them as a matter of urgency.

At the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo from 29 April to 8 May 1995, under an agenda item entitled "Action against national and transnational economic and organized crime and the role of criminal law in the protection of the environment: national experiences and international cooperation", central issues discussed were the expansion of organized crime and the dangers posed by its transnational dimensions. It was emphasized that the traditional approach of considering organized and economic crime as a law and order problem to be addressed mainly at the local or national level had yielded poor results and therefore the response of Governments to the global operation of criminal networks had equally to be a global one. In addition, the Naples Political Declaration and Global Action Plan were considered a milestone [on the way] towards achieving effective international cooperation, embodying the political commitment and determination of States to join forces in fighting organized crime in all its forms. Furthermore, the international community was called upon to concentrate on how to implement its provisions and on the steps that needed to be taken to further its achievements.[16]

In that connection, in its resolution on international instruments, such as a convention or conventions against organized transnational crime, the Ninth Congress invited the Commission on Crime Prevention and Criminal Justice to give priority to initiating the process called for by the Naples Political Declaration and Global Action Plan by requesting the views of Governments on the opportunity of elaborating new international instruments such as a convention or conventions and on the issues or elements that could be covered therein; requested the Commission to consider whether it would be helpful to propose to Governments a list of issues or elements that might be dealt with in such an instrument or instruments; and gave the following matters as examples on which views might be sought for consideration and possible inclusion in a new instrument or instruments: problems and dangers posed by organized crime; national legislation dealing with organized crime and guidelines for legislative and other measures; international cooperation at the investigative, prosecutorial and judicial levels; modalities and guidelines for international cooperation at the regional and international levels; feasibility of various types of international instruments, including conventions, against organized transnational crime; prevention and control of money-laundering and control of the proceeds of crime; and follow-up and implementation mechanisms.[17]

Following up on the implementation of the Naples Political Declaration and Global Action Plan and on the recommendation of the Commission on Crime Prevention and Criminal Justice at its fourth session, from 30 May to 9 June 1995, the Economic and Social Council adopted resolution 1995/11 of 24 July 1995, in which it requested the Secretary-General to initiate the process of requesting the views of Governments on the opportunity and impact of international instruments such as a convention or conventions against organized transnational crime and on the issues and elements that could be covered therein; collect and analyse information on the structure and dynamics of organized transnational crime and on the responses of States to that problem, for the purpose of assisting the international community to increase its knowledge on the matter; submit to Member States at the fifth session of the Commission a proposal on the creation of a cen-

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[16]See *Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, 29 April-8 May 1995* (A/CONF.169/16/Rev.1), chap. IV, sect. B, para. 80.

[17]Ibid., chap. I, sect. 3.

tral repository of existing legislative and regulatory measures and information on organizational structures designed to combat organized transnational crime; submit concrete proposals to the Commission for approval, with a view to developing practical models and guidelines for substantive and procedural legislation in order to assist, in particular, developing countries and countries with economies in transition in reviewing and evaluating their legislation and in planning and undertaking reforms, taking into account existing practices and cultural, legal and social traditions; provide advisory services and technical assistance to requesting Member States in needs assessment, capacity-building and training, as well as in the implementation of the Naples Political Declaration and Global Action Plan; and join efforts with other international, global and regional organizations and mechanisms that had played an active role in combating money-laundering so as to reinforce common regulatory and enforcement strategies in that area and to assist requesting States in assessing their needs in treaty development and the development of criminal justice infrastructure and human resources.

Pursuant to General Assembly resolution 49/159 and Economic and Social Council resolution 1995/11, the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime was held in Buenos Aires from 27 to 30 November 1995. The aim of the Workshop was to examine ways to strengthen and improve the capacity of the countries of Latin America and the Caribbean to respond to organized transnational crime and to improve the mechanisms of regional and multilateral cooperation to combat it. The Workshop called for increased technical cooperation, strategic coordination, legislative action and other measures to combat organized transnational crime in all its manifestations. To promote action at both the national and the regional level to achieve those aims, it adopted the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1, annex).

In preparation for the fifth session of the Commission on Crime Prevention and Criminal Justice, from 21 to 31 May 1996, the Secretariat prepared a report on the basis of information provided by Member States, which reflected the favourable disposition of most responding States towards the need for an international framework for cooperation against organized transnational crime (E/CN.15/1996/2, chap. V, paras. 67-83). However, the understanding during the discussions at the fifth session of the Commission was that the form such a framework could take remained open. The options included a single convention on organized transnational crime, separate conventions on specific issues, a model convention, a framework convention, a set of principles and a draft declaration for adoption by the General Assembly. In that connection, it was pointed out that more work was needed on identifying the specific focus of the framework, its elements and the measures envisaged.[18] The views of Governments on relevant issues were considered in more detail by an open-ended intergovernmental working group established during the session in accordance with Economic and Social Council resolution 1995/11.[19]

On the recommendation of the Commission at its fifth session, the Economic and Social Council adopted resolution 1996/27 of 24 July 1996, in which it took note of the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime; requested the Secretary-General to assist in the implementation of the Naples Political Declaration and Global Action Plan to meet the needs of Member States for: *(a)* increased knowledge on the structure and dynamics of organized transnational crime in all its forms, as well as trends in its development, areas of activity and diversification; *(b)* reviewing

[18] *Official Records of the Economic and Social Council, 1996, Supplement No. 10* and corrigenda (E/1996/30 and Corr.1-3), chap. II, sect. A.1., para. 15.

[19] Ibid., annex III, sect. I.

existing international instruments and exploring the possibility of elaborating new ones to strengthen and improve international cooperation against organized transnational crime; and *(c)* intensified technical assistance in the form of advisory services and training; also requested the Secretary-General to establish a central repository for: *(a)* national legislation, including regulatory measures, on organized transnational crime; *(b)* information on organizational structures designed to combat organized transnational crime; and *(c)* instruments for international cooperation, including bilateral and multilateral treaties and legislation to ensure their implementation, with a view to making them available to requesting Member States; further requested the Secretary-General to continue consultations with Governments on the possibility of elaborating a convention or conventions against organized transnational crime and on the elements that could be included therein; and decided that the Commission on Crime Prevention and Criminal Justice should establish an intersessional open-ended working group at its sixth session for the purpose, inter alia, of considering the possibility of elaborating a convention or conventions against organized transnational crime and identifying elements that could be included therein.

It should be noted that, on the recommendation of the Commission on Crime Prevention and Criminal Justice at its fifth session, the General Assembly in 1996 adopted the International Code of Conduct for Public Officials (resolution 51/59, annex) and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex). Despite their non-binding nature, both instruments were recognized as substantial components of the United Nations body of guidelines on crime prevention and criminal justice embodying a common ideal of how anti-corruption policies should be developed and implemented. In addition, both instruments had their own impact on the multilateral treaty-making process (see A/CONF.203/8, paras. 18 and 19).

The International Code of Conduct for Public Officials was adopted as a tool to guide Member States in their efforts against corruption through a set of basic recommendations that national public officials should follow in the performance of their duties. The Code deals with aspects such as the general principles that should guide public officials in the performance of their duties (i.e. loyalty, integrity, efficiency, effectiveness, fairness and impartiality); conflict of interest and disqualification; disclosure of personal assets by public officials, as well as, if possible, by their spouses and/or dependants; acceptance of gifts or other favours; the handling of confidential information; and the political activity of public officials, which, according to the Code, should not be such as to impair public confidence in the impartial performance of the functions and duties of the public official.

The United Nations Declaration against Corruption and Bribery in International Commercial Transactions contains a set of measures that each State could implement at the national level, in accordance with its own constitution, fundamental legal principles, national laws and procedures, in order to combat all forms of corruption, bribery and related illicit practices in international commercial transactions. Such measures include the criminalization of bribery of foreign public officials, elements of which are contained in the Declaration, and the denial of tax deductibility of bribes paid by any private or public corporation or individual of a State to any public official or elected representative of another country.

In addition, Member States committed themselves to develop or maintain accounting standards and practices that improved the transparency of international commercial transactions; to develop or to encourage the development of business codes, standards or best practices that prohibited corruption, bribery and related illicit practices in international commercial transactions; and to ensure that bank secrecy provisions did not impede or hinder criminal investigations or other legal proceedings relating to such practices.

On the recommendation of the Commission at its fifth session, the General Assembly also adopted the United Nations Declaration on Crime and Public Security (resolution 51/60, annex). In accordance with that Declaration, Member States undertook to seek to protect the security and well-being of all their citizens by taking effective national measures to combat serious transnational crime, including organized crime, illicit drug and arms trafficking, smuggling of other illicit articles, organized trafficking in persons, terrorist crimes and the laundering of proceeds from serious crimes; to promote bilateral, regional, multilateral and global law enforcement cooperation and assistance; to take measures to prevent support for and operations of criminal organizations in their national territories, and, to the fullest extent possible, to provide for effective extradition or prosecution of those who engaged in serious transnational crimes in order to ensure that they found no safe haven.

States also undertook to take measures to improve their ability to detect and interdict the movement across borders of those who engaged in serious transnational crime, as well as the instrumentalities of such crime, and to protect their territorial boundaries; agreed to adopt measures to combat the concealment or disguise of the true origin of the proceeds of serious transnational crime and the intentional conversion or transfer of such proceeds for that purpose, to require adequate record-keeping by financial and related institutions and the reporting of suspicious transactions and to ensure effective laws and procedures to permit the seizure and forfeiture of the proceeds of serious transnational crime; and recognized the need to limit the application of bank secrecy laws, if any, with respect to criminal operations and to obtain the cooperation of financial institutions in detecting those and other operations which might be used for the purpose of money-laundering.

The issue of a convention against transnational organized crime came to the forefront of international attention as a result of General Assembly resolution 51/120 of 12 December 1996, on the question of the elaboration of an international convention against organized transnational crime, following the initiative of the Government of Poland to submit to the Assembly the text of a draft United Nations framework convention against organized crime (A/C.3/51/7, annex).[20] The Assembly requested the Secretary-General to invite all States to submit their views on the question of the elaboration of an international convention against organized transnational crime, including their comments on the proposed draft United Nations framework convention; requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of such an international convention, with a view to finalizing its work on that question as soon as possible; and also requested the Commission to report through the Economic and Social Council to the Assembly at its fifty-second session on the results of its work on that question.

At its sixth session, from 28 April to 9 May 1997, the Commission on Crime Prevention and Criminal Justice considered the report of the Secretary-General on the question of the elaboration of an international convention against organized transnational crime (E/CN.15/1997/7/Add.1), which contained the views on the question, as well as substantive comments on the draft framework convention proposed by the Government of Poland, submitted by 24 Member States.

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[20]The text of the draft United Nations framework convention against organized crime contained provisions on the scope of application and related definitional issues, including a definition of "organized crime", as well as a list of offences based on the terminology used in previous international conventions (art. 1); criminalization (art. 2); criminal liability of corporate persons (art. 3); recognition of foreign convictions (art. 4); jurisdiction (art. 5); international cooperation, including extradition, mutual legal assistance, law enforcement cooperation and cooperation in establishing and implementing witness protection programmes (arts. 6-13); national implementation (art. 14); and implementation mechanism of the convention (arts. 15 and 16).

At the same session, the Commission also took into account the report of an informal meeting on the question of the elaboration of an international convention against organized transnational crime, organized in Palermo, Italy, from 6 to 8 April 1997, by the Fondazione Giovanni e Francesca Falcone in cooperation with the Secretariat (E/CN.15/1997/7/Add.2), at which members of the Commission were invited to discuss what issues a new convention should cover. It was stressed during that meeting that an international convention against organized transnational crime would be of immense value to the world community in view of the dangers that such activity posed to development and democracy and also in view of its global nature. The meeting also showed that whatever reservations remained were still to be allayed.

In addition, the meeting provided an appropriate forum for reviewing the text of the draft framework convention proposed by the Government of Poland and for making relevant comments and remarks. The reports of the two working groups, which reviewed articles 6-10 and 11-14 of the draft text, respectively, were annexed to the report of the meeting.

During the sixth session of the Commission and the relevant discussions on the question of the development of an international convention against organized transnational crime, it was pointed out that a gradual approach to drafting the convention would be desirable and that consensus among Member States on basic directions and fundamental elements should be pursued first, in an effort to lay the groundwork for subsequent discussions on the substance of its provisions. Whereas the view was expressed that it would be important to undertake a careful study of existing international legal mechanisms in order to avoid duplication, many participants were convinced that consideration of the proposal should begin immediately. Specific proposals on additional topics to be included were made, such as extradition, money-laundering, terrorism, trafficking in firearms, trafficking in children, trafficking in illegal migrants, trafficking in nuclear material, confiscation of proceeds of crime and transfer of proceedings. In addition, several participants expressed their views on specific articles of the draft convention.[21]

Furthermore, in accordance with Economic and Social Council resolution 1996/27, at its sixth session the Commission established an in-sessional open-ended working group for the purpose, inter alia, of considering the possibility of elaborating a convention or conventions against organized transnational crime and identifying elements that could be included therein.

The Working Group had before it a document reflecting the views of the Government of the United States of America on the most effective means for discussion by the Commission at its sixth session of the issue of the elaboration of conventions (Economic and Social Council resolution 1997/22, annex V), including in the appendix the text of a draft convention for the suppression of transnational organized crime, as well as a document reflecting the views of the Government of Germany on an alternative solution for a draft United Nations framework convention on combating organized transnational crime (resolution 1997/22, annex VI).

In its report (resolution 1997/22, annex IV), the Working Group stated that it was of the view that its contribution would be most useful to the Commission if it considered the scope and content of such a convention, rather than engaging in a drafting exercise, which would be outside the mandate given by the Council in its resolution 1996/27 and the General Assembly in its resolution 51/120 and would require significantly more time than

[21] *Official Records of the Economic and Social Council, 1997, Supplement No. 10* and corrigendum (E/1997/30 and Corr.1), chap. V, sect. B, para. 65.

was available. In determining the scope and content of such a convention, the international community could draw on the 1988 Convention, but should be able to come up with new and more innovative and creative responses.

The Working Group recognized that it was desirable to develop a convention that would be as comprehensive as possible. In that connection, several States indicated that their remaining reservations on the effectiveness and usefulness of a convention were contingent upon its scope of application and the measures for concerted action that such an instrument would include. Several States stressed the importance they attached to the nature of a convention as a framework instrument. One difficult issue would be arriving at an acceptable definition of organized crime. It was indicated, however, that that issue was not insuperable, especially in the presence of a strong and sustained political will. Several States were of the view that the definition was not necessarily the most crucial element of a convention and that the instrument could come into being without a definition of organized crime. In that connection, it was also suggested that the phenomenon of organized crime was evolving with such rapidity that a definition would limit the scope of application of a convention by omitting activities in which criminal groups might engage. Other States felt that the absence of a definition would send the wrong signal regarding the political will and commitment of the international community. In addition, avoiding the issue would eventually create problems regarding the implementation of a convention. In view of all the above, those States considered that concerted efforts to arrive at a solution should be made. It was suggested that a first step towards a definition might be to use the definitions of offences contained in other international instruments. It was agreed that the work required in connection with the definition could not be carried out by the Working Group but should be undertaken by governmental experts at a future time. There was also discussion about whether, in elaborating the definition, the focus should be on the transnational aspects of organized crime or on organized crime in general. It was pointed out that the mandate of the Commission was related to organized transnational crime but that the issue required further serious consideration in the context of determining the overall scope of a convention.

In the context of the ensuing discussion on whether such a convention should include a list of offences, some States expressed their support for the inclusion of terrorist acts in such a list. Many States were of a contrary view, recalling the initiatives currently under way in the United Nations and other forums on terrorism and the conclusions of the Commission at its fifth session.

The Working Group agreed that it would be useful to focus on widely accepted constituent elements of organized crime. In the discussion that ensued, the elements identified included some form of organization, continuity, the use of intimidation and violence, a hierarchical structure of groups, with division of labour, the pursuit of profit and the exercise of influence on the public, the media and political structures.

The Working Group decided that the best way to proceed for the purpose of advancing the issue was to seek common ground, utilizing as many previous contributions as possible and building on the positive experience and valuable work done in other forums, such as the European Union and the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight. The draft United Nations framework convention against organized crime (annex III to the report) was a useful point of departure and a good basis for further work.

In that connection, the Working Group decided to discuss matters related to international cooperation in criminal matters that would form an essential part of an internation-

al legally binding instrument. The overriding concern would be to equip the international community with an effective instrument to strengthen action against organized crime.

Continuing its efforts for the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and following the meeting organized in Buenos Aires in November 1995, the Secretariat organized an African Regional Ministerial Workshop on Organized Transnational Crime and Corruption in Dakar from 21 to 23 July 1997. All those present at the meeting reiterated their unconditional support for the implementation of and appropriate follow-up to the Naples Declaration and unanimously adopted the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption (E/CN.15/1998/6/Add.1, para. 4). They also adopted the recommendations of a working group established to examine and discuss issues related to the elaboration of an international convention against organized transnational crime (E/CN.15/1998/6/Add.1, annex II).

In its resolution 52/85 of 12 December 1997, the General Assembly decided to establish an intersessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of a possible comprehensive international convention against organized transnational crime, which would submit a report thereon to the Commission on Crime Prevention and Criminal Justice at its seventh session.

The meeting of the intersessional open-ended intergovernmental group of experts was held in Warsaw from 2 to 6 February 1998. In its report (E/CN.15/1998/5), the group stated that there was broad consensus on the desirability of a convention against organized transnational crime. There was much to be gained from that international legal instrument, which would not only build on, but also go beyond, other successful efforts to deal with pressing issues of national and international concern in a multilateral context.

The group understood that the efforts to elaborate the new international convention would be guided by a number of general principles emanating from the general discussion, which were summarized by the Chairman of the meeting as follows:

(a) While the contours of organized crime were generally understood, there continued to be divergences of a legal nature that made it difficult to reach a comprehensive definition. Engaging in such an endeavour might require considerable time, whereas there was a general feeling of the urgency of action in the direction of elaborating the new convention. Organized crime continued to evolve and manifest itself in different ways. As there was a general understanding of criminal organizations, efforts to determine the scope of the convention should build on that understanding, focusing action under the new convention against those groups;

(b) Certain States were of the view that attempting to list all possible criminal activities in which criminal organizations were likely to engage would be difficult and might lead to a convention that was too narrow. Such an approach entailed two major risks. Firstly, it would ab initio prejudice the applicability and effectiveness of the convention, as a list of offences could not be all-inclusive and would most probably exclude emerging forms of criminal activity. Secondly, it would present considerable difficulties with regard to other provisions of the convention, as specific crimes often demanded specific responses. The need to deal with specific offences might be accommodated by additional protocols, which could be negotiated separately, not affecting the comprehensiveness of the convention or its operability and effectiveness. Furthermore, it was observed that such an approach might prove more conducive to a more expeditious negotiating process that would make the new convention a reality in a shorter period of time;

(c) An alternative approach that was proposed might be based on the seriousness of the offence, which might be determined on the basis of the penalty foreseen in national legislation and a requirement that the offence be committed in connection with a criminal organization, association or conspiracy. That approach was not free of difficulties, as the concept of seriousness was not as meaningful in all national systems. However, there was merit in further considering such an approach as a potential solution, especially combining it with a focus on the organized nature of the offence in question, as well as looking at elements that would necessitate international cooperation, including its transnational reach. Certain delegations expressed strong opposition to a "serious crimes convention" as opposed to an instrument focused on organized crime;

(d) There was agreement that the convention should include practical measures of international cooperation, such as judicial cooperation, mutual assistance in criminal matters, extradition, law enforcement cooperation, witness protection and technical assistance. The convention should be a capacity-building instrument for States and the United Nations alike in connection with the collection, analysis and exchange of information, as well as the provision of assistance. Furthermore, the convention should expand the predicate offences for the purpose of action against money-laundering, while it should include provisions creating the obligation of States to confiscate illicitly acquired assets and regulate bank secrecy. The convention should also include provisions to prevent organized crime, such as measures to reduce opportunities for criminal organizations or limit their ability to engage in certain activities. The convention should have provisions that required legislative action on the part of Governments, in order to facilitate meaningful and effective cooperation;

(e) Other international instruments, especially the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) and the 1988 Convention, were useful sources of inspiration. They contained provisions of direct relevance to the new convention. Some of those provisions could provide solutions to similar problems, or serve as a point of departure in order to go beyond their scope, taking into account new needs and developments. In addition, the convention should empower the law enforcement authorities of States parties to employ extraordinary investigative techniques (e.g. wire-tapping and undercover operations), consistent with constitutional safeguards;

(f) Finally, the convention should incorporate appropriate safeguards for the protection of human rights and to ensure compatibility with fundamental national legal principles.

The group also decided to submit to the Commission on Crime Prevention and Criminal Justice, at its seventh session, a non-exhaustive outline of options for contents of the international convention against organized transnational crime for consideration and action.

Following the consistent practice established by the previous regional ministerial workshops in Buenos Aires and Dakar, the Secretariat organized an Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption in Manila from 23 to 25 March 1998. The Workshop unanimously adopted the Manila Declaration on the Prevention and Control of Transnational Crime (E/CN.15/1998/6/Add.2, para. 4). A brief account of the main general and specific comments made in the context of a working group established to discuss issues related to the elaboration of an international convention against organized transnational crime was annexed to the report of the meeting (E/CN.15/1998/6/Add.2, annex II).

As already mentioned, the proposals of the intergovernmental group of experts that had met in Warsaw in February 1998 were submitted to the Commission on Crime

Prevention and Criminal Justice at its seventh session, from 21 to 30 April 1998. At that session, the Commission established an in-sessional working group on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, which discussed the draft convention against organized transnational crime. The working group agreed that the elaboration of the convention must proceed at a vigorous pace, with a view to completing the negotiation process, if possible, by the end of 2000. The working group carried out a thorough discussion of the options compiled in the report of the Warsaw meeting. In particular, it discussed the chapters on scope of application of the convention; participation in an organized criminal group; money-laundering; corporate criminal liability; sanctions; confiscation; transparency of transactions; jurisdiction; extradition; obligation to extradite or prosecute (aut dedere aut judicare); extradition of nationals; and consideration of requests for extradition.

At the same session of the Commission and in the context of discussions on the preparation of the new convention against transnational organized crime, some Member States identified individual issues that they thought merited attention at the international normative level. In that context, the Government of Argentina proposed the drafting of a new convention against trafficking in minors, citing the growing evidence of its becoming an activity in which organized criminal groups were engaged. In addition, the Government of Austria presented to the Commission the draft of an international convention against the smuggling of illegal migrants, while the Government of Italy joined forces and presented a draft protocol aimed at combating the trafficking and transport of migrants by sea, to be attached to the draft convention proposed by the Government of Austria.[22]

The Secretariat had already been mandated to initiate a study on measures to regulate firearms.[23] The United Nations International Study on Firearm Regulation was eventually published in 1998[24] and was before the Commission at its seventh session. The Government of Japan, which had provided funding for the study, and the Government of Canada were of the view that, as a result of the conclusions of the study, the issue of action against the illicit manufacturing of and trafficking in firearms had sufficiently matured to merit attention at the normative level. In that connection, they proposed a new instrument on the subject, which could draw upon and be inspired by the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, concluded at Washington, D.C., on 14 November 1997.[25]

The political decision reached at the end of the seventh session of the Commission was to link the proposals mentioned above to the draft convention against transnational organized crime. As a result and following the outcome of that session, the draft resolution approved by the Commission and recommended to the Economic and Social Council for adoption by the General Assembly (see below) made reference to "additional instruments" addressing the proposed new items. It is noteworthy that, owing to concerns expressed in relation to the lower status of a protocol compared with a full-fledged convention, the Council did not speak of "protocols", leaving the status of the additional instruments open for further consideration at a more opportune moment. It is also worth noting

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[22]*Official Records of the Economic and Social Council, 1998, Supplement No. 10* and corrigendum (E/1998/30 and Corr.1), annex V.

[23]See *Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, 29 April-8 May 1995* (A/CONF.169/16/Rev.1), chap. I, sect. 9, resolution 9, as well as the subsequent Economic and Social Council resolutions 1995/27, on the implementation of the resolutions and recommendations of the Ninth Congress, 1996/28, on follow-up action on firearms regulation for the purpose of crime prevention and public safety, and 1997/28, on firearm regulation for purposes of crime prevention and public health and safety.

[24]United Nations publication, Sales No. E.98.IV.2.

[25]United Nations, *Treaty Series*, vol. 2029, No. 35005.

that, further to the discussions held on the proposal of the Government of Argentina concerning the drafting of a new convention against trafficking in minors, the political decision reached at the seventh session of the Commission was that the additional instrument to be drafted should address trafficking in women and children.

In its resolution 53/111 of 9 December 1998, the General Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea; welcomed the offer of the Government of Argentina to host an informal preparatory meeting of the intergovernmental ad hoc committee at Buenos Aires, so as to ensure the continuation without interruption of the work on the elaboration of the convention; and decided to accept the recommendation of the Commission on Crime Prevention and Criminal Justice to elect Luigi Lauriola (Italy) Chairman of the intergovernmental ad hoc committee.

In addition, in its resolution 53/114 of 9 December 1998, the General Assembly called upon the ad hoc committee to devote attention to the drafting of the main text of the convention, as well as of the international instruments mentioned above.

In anticipation of the expected favourable action by the General Assembly, an informal working group, established to assist the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime (the informal group of Friends of the Chair), held its first session in Rome on 17 and 18 July 1998. The group reviewed and endorsed the provisional agenda of the informal preparatory meeting of the Ad Hoc Committee, which, as already mentioned, the Government of Argentina had generously offered to host in Buenos Aires. The informal group also reviewed a provisional timetable for its work and the work of the Ad Hoc Committee, which had been prepared by the Secretariat. Furthermore, although the terms of reference of the group were oriented primarily towards procedural issues, several substantive aspects began to be aired by Member States (see A/AC.254/2, para. 5).

The meeting discussed the most appropriate way to structure the work of the Ad Hoc Committee in order to allow it to fulfil its mandate, in particular with regard to the consideration of international instruments on trafficking in migrants, including by sea, trafficking in firearms and trafficking in women and children.

The informal preparatory meeting of the Ad Hoc Committee was held in Buenos Aires from 31 August to 4 September 1998 (see A/AC.254/3). The meeting completed the first reading of the outline of options for contents of the international convention against transnational organized crime (contained in the report of the Warsaw meeting), which had been begun at the seventh session of the Commission (see above), on the basis of a working paper submitted by Finland. After the completion of the first reading, the meeting discussed several outstanding issues that had been examined on a preliminary basis at the first meeting of the informal group of Friends of the Chair.

The informal preparatory meeting also discussed the additional international legal instruments or protocols whose preparation the Ad Hoc Committee had been asked to consider. In that connection, the Governments of Austria and Italy submitted a working paper containing elements for an international legal instrument against illegal trafficking and transport of migrants. In relation to the proposed international legal instrument on the trafficking

of women and children, the Chairman of the meeting called on interested delegations to submit a draft text in time for consideration by the Ad Hoc Committee at its first session. In addition, the Government of Canada presented a working paper containing elements for discussion in the preparation of the proposed international legal instrument against illicit manufacturing of and trafficking in firearms, their components and ammunition.

The second meeting of the informal group of Friends of the Chair was convened on 3 September 1998 during the informal preparatory meeting of the Ad Hoc Committee. The informal group discussed procedural issues (see A/AC.254/3, annex I).

A third meeting of the informal group of Friends of the Chair was held in Vienna on 5 and 6 November 1998 (see A/AC.254/6). The informal group reviewed the provisional agenda and proposed organization of work for the first session of the Ad Hoc Committee. Several participants were of the view that the time allocated to the discussion of the additional international legal instruments should allow at least a first reading of the draft texts. The draft texts of the legal instrument against illegal trafficking in and transporting of migrants and the legal instrument against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials had already been submitted. The Governments of Argentina and the United States had announced their intention to submit to the Secretariat by the end of November 1998 elements for a draft international legal instrument against trafficking in women and children.

There was also considerable discussion of the desirability and feasibility of holding informal consultations during the sessions of the Ad Hoc Committee on the additional international legal instruments, in view of the expertise required for their development. It was understood that it remained the prerogative of States to meet and consult informally in their efforts to reach consensus on matters related to the preparation of the convention against transnational organized crime and the additional instruments. However, the informal group attached considerable importance to ensuring the transparency of the negotiation process and the maximum participation of States. Furthermore, it was essential to maintain an appropriate balance in the preparation of the convention and the additional instruments. Therefore, the informal group agreed that the Ad Hoc Committee should avoid, to the extent possible, establishing separate groups to discuss the drafts of the additional instruments.

The informal group endorsed the provisional agenda and proposed organization of work for the first session of the Ad Hoc Committee.

Part One

United Nations Convention against Transnational Organized Crime

Article 1. Statement of purpose

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 1
"Statement of objectives

"The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the States Parties shall take necessary measures, including legislative and administrative measures consistent with the fundamental provisions of their respective domestic legislative systems.

Germany (A/AC.254/5)

"Article X
"Scope of the Convention

"1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems. [E/CN.15/1998/11, annex III, appendix 1, article 1, option 1]

"2. For that purpose, unless the context requires otherwise, organized crime shall be deemed to be any serious crime, committed within the jurisdiction of two or more States, that is punishable under the laws of the requesting Party and of the requested Party by imprisonment or other deprivation of liberty for a maximum period of at least two years or by a more severe penalty.[1]

"3. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and the principle of non-intervention in the domestic affairs of other States.

[1]This does not however exclude the possibility of foreseeing a ground for refusal in the field of mutual assistance in criminal matters, for example if the offence to which the request relates would not be considered to be linked to organized crime if committed under the jurisdiction of the requested State party.

"4. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic law. [United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, article 2, paragraphs 2 and 3]."

***Rolling text (A/AC.254/4)*[2]**

"Article 1
"Statement of objectives

"Option 1

"1. The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

"Option 2

"1. States Parties commit themselves to cooperate to the widest extent possible in the prevention and control of transnational organized crime.

"2. For the purpose of this Convention, "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy.[3]

"Promotion of implementation

"3. Each State Party shall take effective measures to promote within its territory accountability and the scrutiny of its action in the implementation of this Convention.

"4. A State Party may adopt more strict or severe measures than those provided for by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of organized crime."

[2]At various stages of the drafting, certain words, sentences or entire paragraphs were placed in square brackets. In the present text, the absence of brackets should not be construed as approval of the text in question by the informal preparatory meeting held in Buenos Aires from 31 August to 4 September 1998.

[3]It was suggested that this paragraph seeking to define organized crime could be placed in a separate article on definitions (article 2 bis in the draft contained in document A/AC.254/4) (see amendments proposed by Azerbaijan in document A/AC.254/L.20).

Colombia (A/AC.254/L.2)

Colombia suggested combining options 1 and 2 as follows:

"Article 1
"Statement of objectives

"1. The purpose of this Convention is to promote cooperation among the States Parties to the widest extent possible in the prevention and control of organized crime having an international dimension, on the terms defined below. In carrying out their obligations under this Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

"2. Each State Party shall take effective measures to promote and monitor within its territory the implementation of the object and aims of the Convention.

"3. Each State Party may adopt more strict or severe measures than those provided for by the Convention, for the prevention and control of transnational organized crime."

Mexico (A/AC.254/L.8)

"Article 1
"Statement of objectives

"The purpose of this Convention is to promote cooperation among the States Parties so that they can prevent and combat transnational organized crime more effectively."

Second session: 8-12 March 1999

Rolling text (A/AC.254/4/Rev.1)

"Article 1[4]
"Statement of objectives

"1. The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.[5]

"2. Each State Party shall take effective measures to promote and monitor within its territory the implementation of the objectives and aims of the Convention.

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[4]One delegation proposed the following order for the first four articles in both the convention and the optional protocols: article 1 (Purpose), article 2 (Definitions), article 3 (Scope of application) and article 4 (Criminalization).

[5]One delegation proposed the deletion of the second sentence in this paragraph.

"3. Each State Party may adopt more strict or severe measures than those provided for by the Convention for the prevention and control of transnational organized crime.

Rolling text (A/AC.254/4/Rev.2)

"Article 1
"Statement of objectives

"The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively."

Notes by the Secretariat

1. At the second session of the Ad Hoc Committee, Kuwait proposed to dispense with the text of paragraph 2 as the provisions of paragraph 1 of the article had adequately covered the purpose of the convention and the obligation of States parties to take the measures specified in that paragraph (see A/AC.254/L.12).

2. At its seventh session, the Ad Hoc Committee approved the text of the article without amendment (see A/AC.254/25, para. 13). At its tenth session, the Ad Hoc Committee considered, finalized and approved article 1, as last amended in its title. The amendment is reflected in the final text of the convention (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 1
Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2. Use of terms

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 2
"Definitions

"For the purposes of this Convention:

"1. 'Organized crime' means the activities pursued [the acts committed] within the framework of [in relation with] a criminal organization.

"2. A 'criminal organization' means any group of [three or more] persons with hierarchical links or personal relationships durably established for the purpose of enriching itself or controlling territories or markets, internal or foreign, by unlawful means such as violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy.

"3. 'Participation in a criminal organization' means the conduct of a person who:

"*(a)* Concludes with one or more persons an agreement with a view to committing serious offences as defined under article 3 of this Convention; or

"*(b)* Contributes deliberately to the activity of a criminal organization, either to facilitate the general criminal activity of the group or to serve its goals, or with full knowledge of the group's intention to commit serious offences.

"4. 'Money-laundering' means the acts described below, where they are intentionally committed and where their author is aware of the assets' origin as being proceeds from offences committed by a criminal organization:

"*(a)* Conversion or transfer of assets with the aim of concealing or disguising the illegal origin of the said assets;

"*(b)* Concealment or disguise of the nature, origin, location, structure, movement or real ownership of illegal assets or rights relating hereto;

"*(c)* Acquisition, holding or use of the incriminated assets.

"5. 'Proceeds from crime' means any economic advantage accruing from criminal offences committed within the framework of [in relation with] a criminal organization. Such advantage may be an asset of any kind, tangible or intangible, movable or immovable, as well as the legal deeds or documents certifying title to or rights over the asset."

***Germany (A/AC.254/5)*[1]**

"Money-laundering

"[E/CN.15/1998/11, annex III, appendix I, articles 4 and 4 bis]

"'Predicate offence' means any criminal offence that under the law of a Party is punishable by deprivation of liberty or imprisonment for a period of at least four years or was committed by a member of a criminal organization as defined by article Y as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention."

United States of America (A/AC.254/5)

"Article 2 bis
"Definitions

"For the purposes of this Convention:

"1. 'Organized criminal activity' means [the commission of] serious crime involving a group of [three] or more persons, [either for its own sake or] for any purpose relating, directly or indirectly, to the obtaining of a financial or other material benefit.

"2. 'Serious crime' means conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [...] years, or more serious penalty.

"*(a)* For the purpose of implementing articles [...] of this Convention [pertaining to criminalization under articles 3 and 4 and other domestic obligations], a State Party shall consider this definition to refer to a criminal offence under its laws.

"*(b)* For the purpose of implementing articles [...] of this Convention [pertaining to international cooperation], a State Party may deny cooperation as to conduct that would not also constitute a serious crime under its laws.

Rolling text (A/AC.254/4)

"Article 2 bis
"Use of terms

"For the purposes of this Convention:

"*(a)* 'Proceeds of crime' means any economic advantage from criminal offences. It may consist of property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;

"*(b)* 'Predicate offence' means any crime or offence as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention."

[1]See also the proposal of Germany concerning article X (Scope of the Convention), paragraph 2, under article 1 of the convention.

Canada (A/AC.254/L.2)

"Article 2 bis
"Definitions

"For the purposes of this Convention:

"*(a)* 'Organized criminal group' means a structured group of [three] or more persons existing for a period of time and having the aim of committing serious crime in order to, directly or indirectly, obtain a financial or other material benefit;

"*(b)* 'Serious crime' means conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [...] years or a more serious penalty;

"*(i)* For the purpose of implementing articles [...] of this Convention [pertaining to criminalization under articles 3 and 4 and other domestic obligations], a State Party shall consider this definition to refer to a criminal offence under its laws;

"(ii) For the purpose of implementing articles [...] of this Convention [pertaining to international cooperation,] a State Party may deny cooperation as to conduct that would not also constitute a serious crime under its laws;

"*(c)* 'Structured group' means a group that is not randomly formed for the immediate commission of a crime and that needs not have formally defined roles for its participants, the continuity of its membership or a developed structure;

"*(d)* 'Existing for a period of time' means being of sufficient duration for the formation of an agreement or plan to commit a criminal act."

Rolling text (A/AC.254/4/Rev.1)

"Article 2 bis
"Use of terms[2]

"For the purposes of this Convention:

"*(a)* 'Organized criminal group' means a structured group of [three][3] or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit;[4]

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[2]It was noted that other terms used in the convention should also be defined. In the context of the discussion on article 15, the following terms were noted by some delegations as requiring definition: "controlled delivery"; "surveillance, including electronic surveillance"; and "undercover operations". The definition of "controlled delivery" used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627) was accepted as the basis and was included in an adapted form that was not discussed by the Ad Hoc Committee at its first session.

[3]One delegation was of the opinion that no minimum number of group members needed to be stated.

[4]Some delegations noted that, in view of the General Assembly mandate, a definition that referred only to "financial and other material benefit" as a motive for criminal activity was too limited. Colombia proposed the following definition (see A/AC.254/L.2): "'Organized crime' means illegal activity of two or more persons, with hierarchical links or personal relationships, whether or not of a permanent nature, aimed at obtaining economic advantages by means of violence, intimidation or corruption." Uruguay subsequently submitted a proposal to end that definition with the words "by means of violence, intimidation, corruption or other means." Belgium submitted in writing the following definition: "'Organized criminal group' means a structured group of three or more persons established over a period of time and having the purpose to commit in a concerted fashion serious crimes in the sense of the present convention in order to derive, directly or indirectly, financial profit or other material benefit by utilizing [in particular] intimidation, threats, violence, fraud or corruption or other means to conceal or facilitate the realization of those serious crimes." Belgium also proposed that consideration should be given to excluding from the scope of application of the convention organizations with solely political objectives and organizations whose purpose was solely humanitarian, philosophical or religious.

"*(b)* 'Serious crime' means conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [...] years or a more serious penalty;[5]

"(i) For the purpose of implementing articles [...] of this Convention [pertaining to criminalization under articles 3 and 4 and other domestic obligations], a State Party shall consider this definition to refer to a criminal offence under its laws;

"(ii) For the purpose of implementing articles [...] of this Convention [pertaining to international cooperation], a State Party may deny cooperation as to conduct that would not also constitute a serious crime under its laws;

"*(c)* 'Structured group' means a group that is not randomly formed for the immediate commission of a crime and that needs not have formally defined roles for its participants, the continuity of its membership or a developed structure;

"*(d)* 'Existing for a period of time' means being of sufficient duration for the formation of an agreement or plan to commit a criminal act;

"[*(e)* 'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such property;

"*(f)* 'Proceeds of crime' means any property derived from or obtained, directly or indirectly, through the commission of any offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention];[6]

"*(g)* 'Freezing or seizure' means the ordering by the competent authority of the temporary prohibition of the transfer, conversion, exchange, disposal or realization of property and the temporary custody or control thereof;

"*(h)* 'Confiscation', which includes forfeiture where applicable, means the permanent deprivation of property, proceeds or instrumentalities of an offence by order of a court or other competent authority;[7]

"*(i)* 'Predicate offence' means any crime or offence as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention;

"*(j)* 'Controlled delivery' means the technique of allowing illicit or suspect consignments [of ...] to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention].

"*(k)* 'Financial institution' means any credit establishment, insurance and bonding company, general bonded warehouse, financial leasing company, savings and loan institution, finance company with limited objects, credit union, financial factoring company, stockbroking firm or other securities dealer, currency exchange bureau, pension fund administrator or other financial or currency broker.]"[8]

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[5]Several delegations noted that establishment of seriousness on the basis of the length of possible sentence might lead to difficulties in practice, owing to differences in penal systems. One delegation noted that the issue of seriousness should be decided in accordance with the domestic legislation of the two States concerned in a case.

[6]As the scope of the convention was still subject to deliberation at the first session of the Ad Hoc Committee, throughout the present text the alternatives "an offence established in article(s) [...]" (which in document A/AC.254/4/Rev.1 would be article 3, on participation in a criminal organization, and article 4, on money-laundering) and "an offence covered by this Convention" (which would have a broader scope, as established by article 2) were provided, as appropriate.

[7]Subparagraphs *(e)-(h)* were submitted by Colombia (see A/AC.254/L.2). The draft definitions submitted by Colombia were amended to reflect the definitions used in the 1988 Convention, with the words "proceeds or instrumentalities of an offence" added to the definition of "confiscation", as proposed by Colombia.

[8]The definition of "financial institution" is based on a proposal submitted by Mexico (see A/AC.254/L.7). It was not discussed by the Ad Hoc Committee at its first session.

Second session: 8-12 March 1999

Rolling text (A/AC.254/4/Rev.2)

"Article 2 bis
"Use of terms[9]

"For the purposes of this Convention:

"*(a)* 'Organized criminal group' means a structured[10] group [of three or more persons][11] existing for a period of time and having the aim of committing a serious [transnational][12] crime[13] [through concerted action][14] [by using intimidation, violence,

[9]Two delegations proposed that the term "transnational organized crime" should be defined. India proposed the following definition: "Transnational organized crime is any serious crime that either has ramifications in more than one country or is perpetrated in any one country by an organized criminal group operating from the territory of another country." Some delegations noted that the practice in international instruments was to place the article on definitions immediately after the first article, containing the statement of objectives.

[10]India proposed that the term "structured" should be deleted or replaced by a more appropriate term. That proposal was subsequently supported by the Syrian Arab Republic (see A/AC.254/L.131).

[11]Some delegations supported the minimum number of three persons. Other delegations proposed that the minimum number should be two (see, for example, the statement of the delegation of Azerbaijan (A/AC.254/51/Add.17). Still other delegations were of the opinion that no minimum number of group members needed to be stated and that the reference should only be to a "group".

[12]Some delegations proposed that the word "transnational" should be inserted into the definition under subparagraph *(a)*, replacing "serious crime" with "serious transnational crime". Other delegations opposed such a proposal on the ground that it would considerably limit the scope of the convention and moreover that the qualifier "transnational" had been inserted into article 1, which set out the objective of the convention. Croatia noted that references in the text of the convention to "serious crime" should be amended to "serious offences".

[13]India proposed the deletion of the phrases "existing for a period of time" (a proposal subsequently supported by the Syrian Arab Republic (see A/AC.254/L.131)) and "having the aim of committing serious crime".

[14]Some delegations proposed that the phrase "through concerted action" should further qualify the definition of "organized criminal group".

corruption or other means][15] in order to obtain, directly or indirectly, a financial or other material benefit;[16]

"*(b)* "Serious crime" means conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [...] years[17] or a more serious penalty;[18]

"(i) For the purpose of implementing articles [...] of this Convention [pertaining to criminalization under articles 3 and 4 and other domestic obligations], a State Party shall consider this definition to refer to a criminal offence under its laws;

"(ii) For the purpose of implementing articles [...] of this Convention [pertaining to international cooperation], a State Party may deny cooperation as to conduct that would not also constitute a serious crime under its laws;[19]

"*(c)* 'Structured group' means a group that is not randomly formed for the immediate commission of a crime and that needs not have formally defined roles for its participants, the continuity of its membership or a developed structure;[20]

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[15]The insertion of a reference to the means of commission was supported by some delegations. Other delegations noted that such an inclusion might lead to ambiguity or create loopholes that could be exploited by organized criminal groups. One delegation noted that the use of such instrumental means could be an aggravating factor in sentencing.

[16]At its second session, the Ad Hoc Committee engaged in an extensive discussion on the limitation to "financial and other material benefit". Some delegations expressly requested that the words "a financial or other material benefit" should be placed in brackets. The Chairman indicated that the substance of the discussion would be provided in an explanatory note, which would become part of the report of the Ad Hoc Committee. Some delegations noted that, in view of the mandate given to the Ad Hoc Committee by the General Assembly, a definition that referred only to "obtaining a financial and other material benefit" as a motive for criminal activity was too limited. Turkey noted that, if that reference remained in its present formulation, the convention would be unacceptable. Some delegations proposed that the reference to the purpose of the group should be deleted from the definition on the ground that such an intention might be difficult to prove. Some delegations noted that the reference to "other material benefit" should not exclude circumstances where the objectives of the organized criminal group were directed towards illegal personal or sexual gratification, as in the case of "paedophilic networks". Several other delegations supported the limitation in the provision to "obtaining a financial or other material benefit". Those delegations noted that although organized criminal groups might commit, for example, murders, those acts could nonetheless be seen as being indirectly intended to obtain a financial or other material benefit, and would thus fall within the scope of the definition. Specific proposals for amendment in this respect were provided as follows. Egypt proposed that the definition should end with "financial or other material benefit or any other illegitimate objective using violence, intimidation or corruption". As indicated above, Colombia had proposed the following definition at the first session (see A/AC.254/L.2): "'Organized crime' means illegal activity of two or more persons, with hierarchical links or personal relationships, whether or not of a permanent nature, aimed at obtaining economic advantages by means of violence, intimidation or corruption". Uruguay proposed that the reference to material and financial means could end with the words "also when those benefits are sought for political or other purposes". Colombia subsequently submitted an oral proposal that the definition of an "organized criminal group" should refer to a group of natural persons who commit serious crime covered by the present convention (or an annex thereto). Mexico proposed the following definition (see A/AC.254/5/Add.3): "It is understood that transnational organized crime exists when three or more persons agree to organize or are organized, on a permanent or recurring basis, to commit acts that in themselves or when combined with others have as an objective or result the commission of a crime or crimes that are identified in article 2 and over which two or more States Parties have established their jurisdiction, in accordance with article 9 of this Convention." Slovakia proposed the insertion of the words "infiltration into the public or economic structure" after the words "or other material benefit". As already indicated, Belgium proposed that consideration should be given to excluding from the scope of application of the convention organizations with solely political objectives and organizations whose purpose was solely humanitarian, philosophical or religious. Several delegations expressed their support for this limitation of the scope of the convention.

[17]Some delegations, while not taking a position at the second session of the Ad Hoc Committee on the number of years to be inserted here, expressed a preference for a high number of years. Some delegations proposed that reference should also be made to a minimum period of deprivation of liberty. Some other delegations noted that, in their view, that would be unnecessary.

[18]As indicated above, some delegations noted that establishment of seriousness on the basis of the length of possible sentence might lead to difficulties in practice, owing to differences in penal systems. Some delegations noted that the issue of seriousness should be decided in accordance with the domestic legislation of the two States concerned in a case. Other delegations proposed that the seriousness of a crime should be assessed not only in terms of the level of punishment, but also in view of how the offence was categorized under national law. Croatia suggested that reference should be made to the "nature of the offence" and to the "pattern of action of the organized criminal group". In addition, some delegations noted that reference could also be made to the list of offences that could be included either in an annex to the convention or in the *travaux préparatoires* (see section D of the text concerning article 3 of the convention in part one).

[19]Some delegations proposed the deletion of both subparagraph *(b)* (i) and *(b)* (ii). Kuwait proposed that deletion, provided that the period of punishment was fixed at three years and with the addition of the following phrase: "pursuant to the provisions of domestic laws of States Parties" (see A/AC.254/L.12).

[20]One delegation was of the view that one determinant of a "structured group" was that it had a hierarchy. Two delegations proposed the deletion of the words "or a developed structure". Some delegations noted that reference could be made to the "permanent or recurring nature" of the activity of the group.

"*(d)* 'Existing for a period of time' means being of sufficient duration for the formation of an agreement or plan to commit a criminal act;[21]

"[*(e)* 'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such property;

"*(f)* 'Proceeds of crime' means any property derived from or obtained, directly or indirectly, through the commission of any offence established in article(s) [...] [of an offence covered by this Convention];

"*(g)* 'Freezing or seizure' means the ordering by the competent authority of the temporary prohibition of the transfer, conversion, exchange, disposal or realization of property and the temporary custody or control thereof;

"*(h)* 'Confiscation', which includes forfeiture where applicable, means the permanent deprivation of property, proceeds or instrumentalities of an offence by order of a court or other competent authority;]

"*(i)* 'Predicate offence' means any crime or offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 4 of this Convention;

"*(j)* 'Controlled delivery' means the technique of allowing illicit or suspect consignments [of ...] to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of an offence established in article(s) [...] [of an offence covered by this Convention];

"[*(k)* 'Financial institution' means any credit establishment, insurance and bonding company, general bonded warehouse, financial leasing company, savings and loan institution, finance company with limited objectives, credit union, financial factoring company, stockbroking firm or other securities dealer, currency exchange bureau, pension fund administrator or other financial or currency broker.]"

Seventh session: 17-28 January 2000

Notes by the Secretariat

1. The version of article 2 bis contained in document A/AC.254/4/Rev.2 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.3-6).

Rolling text (A/AC.254/4/Rev.7)

"Article 2 bis
"Use of terms

"For the purposes of this Convention:

"*(a)* 'Organized criminal group' shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of commit-

[21]Norway noted that a reading of the definitions in subparagraphs *(a)-(d)* suggested that the convention could have an excessively wide scope. The delegation proposed that subparagraph *(d)* should be deleted and that subparagraph *(c)* should end with the words "commission of a crime". Another delegation proposed the deletion of both subparagraphs *(c)* and *(d)*.

ting one or more serious crimes or offences established pursuant to this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;[22]

"*(b)* 'Serious crime' shall mean conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. For the purpose of implementing articles 3, 4, 4 ter and 17 bis of this Convention, a State Party shall consider this definition to refer to a criminal offence under its laws;[23]

"*(c)* 'Structured group' shall mean a group that is not randomly formed for the immediate commission of a crime and that does not need to have formally defined roles for its members, the continuity of its membership or a developed structure;

"[Old subparagraph (d) has been deleted]

"*(d)* 'Property' shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such property;

"*(e)* 'Proceeds of crime' shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

"*(f)* 'Freezing or seizure' shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;

"*(g)* 'Confiscation', which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

"*(h)* 'Predicate offence' shall mean any crime or offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 4 of this Convention;

"*(i)* 'Controlled delivery' shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

"[Subparagraph (k) has been deleted]"[24]

Notes by the Secretariat

2. At its seventh session, the Ad Hoc Committee approved subparagraphs *(b)-(i)* of article 2 bis, as amended. It also decided to keep the existing text of subparagraph *(a)* as

[22]In the discussion on the definition of "organized criminal group", the Ad Hoc Committee agreed that the term "financial or other material benefit" should be understood broadly to include, for example, personal or sexual gratification. Some delegations, including those of Algeria, Egypt and Turkey, were of the view that the scope of the convention should specifically include crimes committed in order to obtain, directly or indirectly, moral benefit. Other delegations were of the view that that concept was ambiguous. Algeria proposed the addition of the words "or any other purpose".

[23]Subparagraph *b* (ii) of article 2 bis in the version contained in document A/AC.254/4/Rev.6 was deleted at the seventh session of the Ad Hoc Committee, with its substance to be reconsidered in connection with article 10, paragraph 5, and article 14, paragraph 6.

[24]At the seventh session of the Ad Hoc Committee, it was decided that the need to include a definition of "financial institution" in the present article should be reviewed in the context of the final formulation of article 4 bis.

the basis for further consideration, in connection also with article 2 of the draft convention. In the discussion on the definition of the term "structured group", it was agreed that the term was to be used in a broader sense and that it would include both groups with a hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members of the group did not need to be formally defined. There did not need to be continuity in the composition of the group. However, the term would not include groups formed on an ad hoc basis for the immediate commission of an offence, such as groups formed randomly in the course of a riot (see A/AC.254/25, paras. 15 and 16).

3. At the eighth session of the Ad Hoc Committee, article 2 bis was further discussed. The Ad Hoc Committee decided to retain the text unchanged and to reflect the debate in the footnotes accompanying the text (see A/AC.254/28, para. 13). It was emphasized that the inclusion of a specific number of persons in an organized criminal group would not prejudice the rights of States Parties pursuant to paragraph 2 of article 23 ter. The Ad Hoc Committee reiterated that the words "in order to obtain, directly or indirectly, a financial or other material benefit" should be understood broadly, to include, for example, crimes in which the predominant motivation might be sexual gratification, such as the receipt or trade of materials by members of child pornography rings, the trading of children by members of paedophile rings or cost-sharing among ring members. The proposal of Algeria to add the words "or any other purpose" was supported at the eighth session of the Ad Hoc Committee by Egypt, Morocco and Turkey. At the same session, Turkey stated that it could not accept the present formulation of the paragraph, which excluded not only crimes committed for purposes other than financial or material benefit, but also the links between transnational organized crime and terrorist acts, established in the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex). Turkey strongly favoured annexing to the convention an indicative list that included terrorist acts. At the eighth session of the Ad Hoc Committee, Japan proposed that the words "one or more serious crimes or offences established pursuant to this Convention" should be replaced with the words "one or more serious crimes or offences established pursuant to articles 4, 4 ter or 17 bis of the Convention", because inclusion of the offences established pursuant to article 3 in the subparagraph would lead to a tautology owing to the existence of the phrase "an organized criminal group" in that article.

Tenth session: 17-28 July 2000

Notes by the Secretariat

4. The version of article 2 bis contained in document A/AC.254/4/Rev.7 remained unchanged in the intermediate drafts of the convention A/AC.254/4/Revs.8 and 9).

5. At the tenth session of the Ad Hoc Committee, the European Commission submitted specific proposals, including on article 2 bis, necessary to secure accession by the Community to the convention and its protocols (see A/AC.254/L.217), based on recent United Nations Conventions (on biodiversity, climate change and others), taking into account but not following precisely the wording of the 1988 Convention, with regard to which the problem of accession by the European Community was settled hastily at the end of the negotiations. This fact led to the adoption of a text that is certainly not perfect in many respects. Thus, the more recent United Nations conventions can better serve as a model, but need to be adapted to the conditions prevailing in the precise case (see also articles 36-40 of the convention in part one). The proposal of the European Commission on article 2 bis of the draft convention was as follows:

European Commission (A/AC.254/L.217)

"Article 2 bis
"Use of terms

"1. The European Commission proposes to add the following new subparagraph after subparagraph *(i)*:

'"Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competences.'"[25]

Notes by the Secretariat

6. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 2 bis, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 2
Use of terms

For the purposes of this Convention:

(a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

[25]Definition taken from article 2 of the Convention on Biological Diversity (United Nations *Treaty Series*, vol. 1760, No. 30619) followed by other United Nations conventions. The last part is similar to the text of the 1988 Convention and article 1, paragraph 2, of the United Nations Convention on the Law of the Sea (United Nations *Treaty Series*, vol. 1833, No. 31363. It could be avoided if, as in the Convention on Biological Diversity, the term "Contracting Parties" were to be used instead of the term "States Parties".

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

C. Interpretative notes

The interpretative notes on article 2 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 2-6) are as follows:

Subparagraph (a)

(a) The inclusion of a specific number of persons would not prejudice the rights of States Parties pursuant to article 34, paragraph 3.

(b) The words "in order to obtain, directly or indirectly, a financial or other material benefit" should be understood broadly, to include, for example, crimes in which the predominant motivation may be sexual gratification, such as the receipt or trade of materials by members of child pornography rings, the trading of children by members of paedophile rings or cost-sharing among ring members.

Subparagraph (c)

(c) The term "structured group" is to be used in a broad sense so as to include both groups with hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members of the group need not be formally defined.

Subparagraph (f)

(d) The terms "freezing" or "seizure" as defined in article 2, subparagraph *(f)*, can be found in articles 12 and 13 of the United Nations Convention against Transnational Organized Crime. The term "search and seizure" appearing in article 18 should not be confused with "seizure" in article 2. "Search and seizure" refers to the use of intrusive compulsory measures by law enforcement authorities to obtain evidence for purposes of a criminal case. The term "freezing" in article 18 is used to cover the concept defined as "freezing" or "seizure" in article 2 and should be understood more broadly to include not only property but also evidence.

Subparagraph (g)

(e) When the domestic law of a State party requires the order of a court for confiscation, that court will be considered the only competent authority for the purposes of this definition.

Article 3. Scope of application

A. Negotiation texts

Notes by the Secretariat

1. In the preparatory stage, before the establishment of the Ad Hoc Committee, extensive discussion had taken place concerning the scope of application of a convention against transnational organized crime (see also A/AC.254/3 and A/AC.254/6). Three basic alternatives were examined with a view to defining the scope of application of the convention: first, the use of a "statement of objectives" to provide a frame of reference for the entire convention, as reflected in a proposal submitted by the United States (see below); second, the use of a "seriousness test" combined with an "organized nature test", as reflected in a proposal submitted by France (see below); and third, the use of either an exhaustive or illustrative list of offences. The inclusion of terrorist acts in the scope of application of the convention was strongly supported by Turkey (see A/AC.254/5).

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 3
"Scope of application

"1. This Convention shall apply to the prevention and prosecution of serious offences whose circumstances make it reasonable to suppose that they have been committed within the framework of [in relation with] a criminal organization.

"2. Serious offences are those defined as such under this Convention and offences punishable by a prison sentence or deprivation of liberty of not less than [four years].

"3. The circumstances that make it reasonable to suppose that a criminal organization is involved in the commission of an offence include:

"*(a)* The presence of illegal traffic in person or goods;

"*(b)* The amount of the illegal profits or economic prejudice;

"*(c)* The transnational character of the offence;

"*(d)* The extensiveness of the means employed or the complexity of the organization;

"*(e)* The recourse to money-laundering."

United States of America (A/AC.254/5)

"Article 2
"Scope of application

"This Convention shall, except as otherwise provided herein, apply to the prevention, investigation and prosecution of organized criminal activity as defined in article 2 bis and to the offences in articles 3 and 4."

Rolling text (A/AC.254/4)

"Article 2
"Scope of application

"Option 1

"1. States Parties commit themselves to cooperate to the widest extent possible in combating transnational organized crime. For that purpose, the Convention shall apply to [the prevention, investigation and prosecution of] serious crime, which is defined as any offence punishable [in the requesting State] by imprisonment or other deprivation of liberty of not less than [...] years. The seriousness of the offence may also be inferred from the involvement of a criminal organization in committing the offence, the transnational effect of the offence or any other element typical of organized crime.[1]

"Option 2

"1. The Convention shall apply to serious crime when the circumstances provide reasonable grounds to believe that a criminal organization was involved in the commission of an offence.

"2. 'Serious crime' is defined as any offence punishable by imprisonment or other deprivation of liberty of a maximum of at least [...] years.[2]

"3. Among the circumstances that may be taken into account in deciding whether there are reasonable grounds to believe that a criminal organization was involved are the following:

"*(a)* The nature of the offence;

"*(b)* The transnational character of the offence;

"*(c)* Whether money-laundering is involved; or

"*(d)* Whether the offence required significant planning or means for its commission.

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[1]This option would include the insertion of an illustrative list of offences into the *travaux préparatoires* (see the attachment in section D below). Furthermore, according to this option, the articles on, for example, extradition and mutual legal assistance could include, as grounds for refusal of assistance, "if, in view of the circumstances of the suspected offence, it evidently did not involve a criminal organization and acceding to the request would overburden the authorities of the requested State".

[2]This option would include the insertion of an illustrative list of offences in the *travaux préparatoires* (see the attachment in section D below).

"Option 3

"1. For the purpose of this Convention, 'organized crime' means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy, in particular by:

"*(a)* Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[3]

"*(b)* Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[4]

"*(c)* Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[5]

"*(d)* Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[6] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;[7]

"*(e)* Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;[8]

"*(f)* Terrorist acts;

"*(g)* Illicit traffic in or stealing of arms and explosive materials or devices;

"*(h)* Illicit traffic in or stealing of motor vehicles;

"*(i)* Corruption of public officials.

"2. For the purpose of this Convention, "organized crime" includes commission of an act by a member of a group as part of the criminal activity of such organization.

"*Non-applicability to offences with solely domestic connections*

"Option 1

"2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State.

"Option 2

"2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the

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[3]United Nations, *Treaty Series*, vol. 1582, No. 27627.

[4]General Assembly resolution 317 (IV), annex.

[5]League of Nations, *Treaty Series*, vol. 112, p. 371.

[6]United Nations, *Treaty Series*, vol. 823, No. 11806.

[7]The Ad Hoc Committee decided to complete this subparagraph at a subsequent session.

[8]United Nations, *Treaty Series*, vol. 1456, No. 24631.

victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.

"*Principle of non-intervention*

"3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

"*Exclusive exercise of jurisdiction and performance of functions*

"4. A State Party shall not undertake in the territory of another State the exercise of jurisdiction and performance of functions that are exclusively reserved for the authorities of that other State by its domestic law.

"*Protocols*

"5. The annexed Protocols form an integral part of this Convention.

"*Choice of international instrument*[9]

"6. [*Insert the provision on the selection of instrument when several international instruments would be applicable*]

"7. States Parties may apply article(s) [...] of this Convention to other multilateral conventions to the extent agreed between States Parties."

Mexico (A/AC.254/L.8)

"Article 2
"Scope of application

"This Convention shall apply to the prevention, investigation and prosecution of crimes of a transnational character committed by criminal organizations and considered as serious in accordance with the national legislation of each State Party, such as:

"*(a)* Illicit production, trafficking and distribution of narcotic drugs or psychotropic substances, as defined in pertinent conventions of the United Nations;

"*(b)* Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, of 1949 including illicit traffic of women and children, and also traffic in organs;

"*(c)* Illicit traffic in migrants;

"*(d)* Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency, of 1929;

"*(e)* Illicit traffic in or stealing of cultural objects, as defined in the pertinent conventions;

[9]This issue is also dealt with in article 24.

"*(f)* Stealing of nuclear material, its misuse or threat to misuse, as defined by the Convention on the Physical Protection of Nuclear Material, of 1980;

"*(g)* Terrorist acts as defined in the pertinent international conventions;

"*(h)* Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

"*(i)* Illicit traffic in or stealing of motor vehicles;

"*(j)* Corruption, as defined in international conventions on the subject;

"*(k)* Illicit access to computer systems and equipment."

Rolling text (A/AC.254/4/Rev.1)

"Article 2
"Scope of application

"1. The Convention shall, except as otherwise provided herein,[10] apply to the prevention, investigation and prosecution of serious crime involving an organized criminal group as defined in article 2 bis and the offences established in articles 3 and 4.

"[2. Among the circumstances that may be taken into account in deciding whether there are reasonable grounds to believe that a criminal organization is involved are the following:

"*(a)* The nature of the offence;

"*(b)* The transnational character of the offence;

"*(c)* Whether money-laundering is involved; and

"*(d)* Whether the offence required significant planning or means for its commission.][11,12]

"[3. For the purposes of the application of paragraph 1 above, "serious crime" shall be deemed to include, among others, acts such as the following:

"*(a)* Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

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[10]One delegation noted that, in certain cases, owing to the fact that an investigation was at a preliminary stage, it might not be possible for a requested State to establish with certainty that a particular offence was connected to organized crime. That should be taken into consideration in determining the scope of application of the various articles dealing with international cooperation, such as mutual legal assistance.

[11]One delegation noted that the phrase "significant ... means for its commission" should be clarified. The delegation noted that the emphasis should be on the intent, as reflected in the planning of the offence; it was the view of that delegation that the means used to commit the offence was of little significance.

[12]The drafting of paragraph 1 was based on a proposal submitted by Canada (see A/AC.254/L.2). The drafting of paragraphs 2 to 4 was based on a proposal submitted by Colombia (see A/AC.254/L.2). In the discussions on the scope of the draft convention that took place at the first session of the Ad Hoc Committee, many delegations expressed their preference for defining the scope on the basis of paragraph 1, not on the basis of additional paragraphs 2 to 4. They noted their strong opposition to the inclusion of paragraph 3, although some of those delegations noted that an illustrative list of offences could be inserted in the *travaux préparatoires*. However, some other delegations expressed their support for the inclusion also of paragraphs 2 to 4 and noted their strong support for the inclusion of paragraph 3 as an indicative, but not exhaustive, list of the offences covered by the convention. Regarding paragraph 2, some delegations noted that it was unclear whether the assessment called for was to be made by the requesting State, the requested State or both.

"*(b)* Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;

"*(c)* Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;

"*(d)* Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;

"*(e)* Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;

"*(f)* Acts contained in the United Nations conventions against terrorism;[13]

"*(g)* Illicit manufacture of and traffic in firearms, their parts and components, ammunition, or explosive materials or devices;[14]

"*(h)* Illicit traffic in or stealing of motor vehicles, their parts and components; and

"*(i)* Corruption of public officials and officials of private institutions.][15]

"[4. For the purposes of this Convention, acts such as those noted in paragraph 3 of this article shall be understood as offences even though they may be defined with different designations in the domestic law of a State Party.][16]

"Non-applicability to offences with solely domestic connections[17]

"Option 1

"5. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State.

"Option 2

"5. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.

[13]One delegation proposed that reference should be made to the 1998 Arab Convention on the Suppression of Terrorism. Some delegations were of the view that the convention, while not intended as an instrument against terrorism, should endeavour to cover the emerging links between terrorist acts and organized crime.

[14]One delegation proposed that the definition used in the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials should be used.

[15]Individual delegations also proposed the inclusion of illicit traffic in women and children under subparagraph *(b)*, as well as the inclusion of the following as additional subparagraphs: illicit traffic in migrants; illicit traffic in endangered animals; illicit traffic in human body parts; and illicit access to computer systems and equipment.

[16]Singapore, while supporting a "closed list system of offences", opposed the method of defining them by reference to various conventions, whether named specifically or generically, arguing that not all of them could be said to have achieved universal recognition such as to warrant their inclusion in the list as evidence of customary practice.

[17]Some delegations proposed the deletion of both options in this paragraph. Other delegations, however, stated that the scope of the convention should include only offences with a transnational dimension.

"*Principle of non-intervention*

"6. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

"*Exclusive exercise of jurisdiction and performance of functions*

"7. A State Party shall not undertake in the territory of another State the exercise of jurisdiction and performance of functions that are exclusively reserved for the authorities of that other State by its domestic law.

"*Protocols*

"8. The annexed Protocols form an integral part of this Convention.[18]

"*Choice of international instrument*

"9. [*Insert the provision on the selection of instrument when several international instruments would be applicable*]

"10. States Parties may apply article(s) [...] of this Convention to other multilateral conventions to the extent agreed between States Parties."

Second session: 8-12 March 1999

Colombia (A/AC.254/L.15)

"Article 2
"Scope of application

"1. The Convention shall apply to the prevention, investigation and prosecution of offences referred to herein involving a transnational organized criminal group.

"2. Among the circumstances that may be taken into account in establishing whether a criminal organization is involved in any of the offences covered by this Convention are the following:

"*(a)* The transnational character of the offence;

"*(b)* The perpetration of acts of money-laundering;

"*(c)* The means used for its preparation, execution, commission or completion.

"3. The Convention shall apply, inter alia, to the following offences: (indicative list of offences).

[18]In connection with the consideration of the protocols, there was considerable discussion of the link between the protocols and the convention. Australia made a proposal to the effect that a State party to one of the protocols must also be a party to the convention and that a State party to the convention should not be bound by a protocol unless the party had expressly accepted the protocol (see A/AC.254/L.9). Two delegations proposed the deletion of paragraph 8.

"*The text of paragraph 4 could be included, as an explanatory note to paragraph 3, worded as follows:*

"4. For the purposes of this Convention, acts such as those noted in paragraph 3 of this article shall be understood as offences penalized under criminal law, even though they may be defined with different designations in the domestic law of a State Party.

"*New paragraph 5 reproduces option 2 of paragraph 5, amended to read as follows:*

"5. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State. However, in the case of organized crime within national confines, States may afford each other mutual judicial assistance and law enforcement cooperation taking this Convention as a framework.

"6. (*Former paragraph 6*)

"7. (*Former paragraph 7*)

"8. The annexed Protocols form an integral part of and have equal force with this Convention.

"9. States Parties may apply the mechanisms for judicial and law enforcement assistance and cooperation provided for in this Convention to other bilateral or multilateral conventions or treaties, whenever they so agree."

Rolling text (A/AC.254/4/Rev.2)

"Article 2
"Scope of application[19]

"1. The Convention shall, except as otherwise provided herein,[20] apply to the prevention,[21] investigation and prosecution of serious crime involving a [transnational] organized criminal group as defined in article 2 bis and the offences established in articles 3 and 4.[22]

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[19]At its second session, the Ad Hoc Committee decided to continue its work on the basis of the revised text of article 2 (see A/AC.254/4/Rev.1). The Ad Hoc Committee decided that a provision originally to be found in this article on criteria for deciding whether or not an offence was committed by an organized criminal group could be used as a point of reference in reviewing, for example, article 14 (Mutual legal assistance). The Ad Hoc Committee also accepted a compromise proposal by its Chairman that a list of offences, which could be either indicative or exhaustive, such as the list originally contained in this article (provided in the attachment in section D below), could be included either in an annex to the convention or in the *travaux préparatoires.* That list would, however, need to be supplemented with proposals from States (see the attachment in section D below and also the report of the Ad Hoc Committee on its second session (A/AC.254/11)).

[20]One delegation noted that, in certain cases, owing to the fact that an investigation was at a preliminary stage, it might not be possible for a requested State to establish with certainty that a particular offence was connected to organized crime. That should be taken into consideration in determining the scope of application of the various articles dealing with international cooperation, such as mutual legal assistance.

[21]Oman was of the view that the word "prevention" should be deleted, as this article should deal only with the scope of application of the convention. The same view was also expressed by Kuwait (see A/AC.254/L.12).

[22]The Philippines proposed the following rewording of paragraph 1 of this article: "Except as otherwise provided herein, the Convention shall apply to the prevention, investigation and prosecution of transnational organized crime. For this purpose, transnational organized crime refers to a serious crime that is committed by an organized criminal group and that has an international dimension, such as, but not limited to, the following: *(a)* if the offence is committed within two or more States; or *(b)* if the members of the criminal group are nationals of two or more States; or *(c)* if the offence is committed in one State but the victim is a national or entity of another State; or *(d)* if the offence is committed in one State but planned, directed or controlled in another State". The Philippines also proposed the deletion of paragraph 2 of this article as it would be superseded by the revised paragraph 1.

"[2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.][23]

"3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

"4. [Nothing in this Convention entitles a State Party to][24] [A State Party shall not][25] undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

[*Paragraphs moved*]"[26]

Seventh session: 17-28 January 2000

Notes by the Secretariat

2. The version of article 2 contained in document A/AC.254/4/Rev.2 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.3-6).

France (A/AC.254/L.132)

"Article 2
"Scope of application

"1. The Convention shall, except as otherwise provided herein, apply to the prevention and suppression:

"*(a)* Of serious crime, as defined in article 2 bis;

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[23]This paragraph was previously an option for paragraph 5 of this article. It was retained in brackets pending a decision on the retention of the bracketed word "transnational" in paragraph 1. Mexico proposed the following formulation: "The present Convention shall not apply if the offence is committed within a single State, if all members of the criminal group are nationals of or have substantial links with that State, if all victims are nationals or entities of that State and if the effects of the offence are produced only in that State [with the proviso that the provisions of the articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature]." Mexico specified that the inclusion of the part of the sentence in brackets would depend on the definition of serious crime. Oman suggested that the words "all members of the criminal group" should be replaced with the words "all or one of the members of the criminal group" to ensure that the presence of a foreign element in the offence would not constitute a transnational crime.

[24]This language is derived from article 18 of the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex). One delegation suggested that article 19, paragraph 1, of the same Convention might also be relevant in this regard.

[25]This language is derived from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

[26]Pursuant to a decision of the Ad Hoc Committee at its second session, the provision on the relationship between the convention and the protocols thereto is dealt with in article 26 bis.

"*(b)* Of the offences established in articles 4, 4 ter and 17 bis, where involving an organized criminal group; and

"*(c)* Of the offence established in article 3."

Notes by the Secretariat

3. At its seventh session, the Ad Hoc Committee provisionally approved paragraphs 3 and 4 of article 2, as amended. However, the Ad Hoc Committee decided to keep paragraphs 1 and 2 of article 2 under review and to revert to the text in the light of the results of future negotiations on other articles of the draft convention that might have a bearing on the scope of the instrument. The Ad Hoc Committee also decided to use as a basis for further consideration of those paragraphs the text proposed by the representative of the Netherlands, in her capacity as the coordinator of an informal working group set up to discuss paragraphs 1 and 2 of article 2 at the request of the Chairman of the Ad Hoc Committee. That text was as follows:

Recommendations of the open-ended informal working group on article 2, paragraphs 1 and 2, submitted at the request of the Chairman (A/AC.254/L.140)

"Article 2
"Scope of application

"1. The Convention shall apply, except as otherwise stated therein, to the prevention, investigation and prosecution of:

"*(a)* The offences established in accordance with articles 3, 4, 4 ter and 17 bis;[27] and

"*(b)* Serious offences involving an organized criminal group as defined in article 2 bis.

"2. The Convention shall not apply, except as otherwise provided therein,[28] where such an offence is committed within a single State, all participants of the organized criminal group or, where no such group is involved, all alleged offenders are nationals of that State and are present in that State, and no State has a basis under article 9, paragraphs 1 and 2,[29] to exercise jurisdiction."

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[27]On the understanding that:

(a) In article 4 ter, paragraph 1, and in the chapeau of article 17 bis, the words "[and involving an organized criminal group]" will be deleted;

(b) In the articles on cooperation, in particular articles 10 (Extradition) and 14 (Mutual legal assistance), it will be stated that the obligation to apply the articles exists when the offences as referred to in article 2, paragraph 1, are committed involving an organized criminal group; and

(c) Furthermore, in the articles on cooperation, it will be stated that States may apply them even where there is no involvement of a criminal group.

[28]It could be advisable to try to have a more explicit text that specifies which of the provisions of the convention can apply to "domestic cases".

[29]Article 9, paragraph 1 *(a)* and *(b)*, on territorial jurisdiction; and paragraph 2 *(a)*, on the nationality or residency of the victim, *(b)*, on the nationality or residency of the offender and *(c)*, concerning an offence with a view to an offence within the territory.

Rolling text (A/AC.254/4/Rev.7)

"Article 2
"Scope of application[30,31]

"1. The Convention shall apply, except as otherwise provided herein, to the prevention, investigation and prosecution of:

"*(a)* The offences established in accordance with articles 3, 4, 4 ter and 17 bis; and

"*(b)* Serious offences involving an organized criminal group as defined in article 2 bis.

"2. This Convention shall not apply, except as otherwise provided herein, when such an offence is committed within a single State, all members of the organized criminal group or, where no such group is involved, all alleged offenders are nationals of that State and are present in that State, and no other State has a basis under article 9, paragraphs 1 and 2, to exercise jurisdiction.

"3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.[32]

"4. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law."

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Rev.8)

"Article 2
"Scope of application[33]

"1. The Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

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[30]As decided by the Ad Hoc Committee at its seventh session, the order of articles 2 and 2 bis would be reversed in the final text.

[31]Paragraphs 1 and 2 of article 2 remained under review (see the report of the Ad Hoc Committee on its seventh session (A/AC.254/25)). In a statement made prior to the adoption of the report of the Ad Hoc Committee on its seventh session, the Group of 77 and China expressed their preference for the draft text of paragraphs 1 and 2 of article 2 as contained in A/AC.254/4/Rev.6. That text was as follows:

"1. The Convention shall, except as otherwise provided herein, apply to the prevention, investigation and prosecution of serious crime involving a [transnational] organized criminal group as defined in article 2 bis and the offences established in articles 3 and 4.

"[2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.]"

[32]At the seventh session, Poland proposed that paragraphs 3 and 4 should be placed in a separate article.

[33]Paragraphs 1 and 2 of article 2 remained under review. The present text of those paragraphs was submitted by Singapore at the eighth session of the Ad Hoc Committee (A/AC.254/L.152 and Corr.1) and was regarded as a basis for the further consideration of paragraphs 1 and 2 of article 2. The Netherlands proposed that the text of subparagraph *(b)* of paragraph 2 should be replaced with the following: "Its prevention, investigation or prosecution requires the cooperation of at least two States Parties". Some delegations were of the view that agreement on the establishment in article 2 of the convention of a link between the offences established by the convention and the involvement of an organized criminal group would imply, as a matter of consequence, the deletion of the phrase "and involving an organized criminal group" from the criminalization articles, especially articles 4 ter and 17 bis of the convention.

"*(a)* The offences established in accordance with articles 3, 4, 4 ter and 17 bis of this Convention; and

"*(b)* Serious offences as defined in article 2 bis of this Convention;

where the offence is transnational in nature and involves an organized criminal group.

"2. For the purpose of paragraph 1, an offence is transnational in nature if:

"*(a)* It is committed in more than one State; or

"*(b)* It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in a different State.

"3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

"4. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law."

Tenth session: 17-28 July 2000

Notes by the Secretariat

4. Delegations based their comments on the text of article 2 of the revised draft convention contained in document A/AC.254/4/Rev.9 and Corr.1, which was the same as that contained in document A/AC.254/4/Rev.8. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 2, as last amended. Paragraphs 3 and 4 were transferred to a new separate article (article 4). Furthermore, it was decided that two additional subparagraphs should be placed in paragraph 2 on the basis of a proposal submitted by the United States. The text of that proposal was as follows.

United States of America (A/AC.254/L.216)

"Article 2

"1. Amend paragraph 2 to read as follows:

'2. For the purpose of paragraph 1, an offence is transnational in nature if:

'*(a)* [...]

'*(b)* [...]

'*(c)* It is committed in one State, but involves an organized criminal group that operates or has members in more than one State;

'*(d)* It is committed in one State but with effects or intended effects in another State.'"

The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

5. It should be noted that Turkey considered the draft convention a valuable tool in fighting organized crime, in line with the consistent determination and support of Turkey for bilateral and multilateral cooperation in combating that phenomenon. For that reason, Turkey had attributed great importance to the development of the draft convention and had participated actively in the process from its initial stages. Turkey had been confident until the final phase of the negotiations that the convention would cover all aspects of transnational organized crime. The experience of Turkey had demonstrated that there were evident links between terrorist crimes and organized crime. Those links had been established at the World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy, in 1994. Turkey therefore believed that the reflection of those dangerous links in the text of the convention would better serve that instrument's purposes. Unfortunately, and despite the efforts of several delegations to draw attention to those links through constructive and concrete proposals, the links had been consciously omitted from the final text of the draft convention. The result was not satisfactory to Turkey, because the convention would leave loopholes that criminals might exploit. Nevertheless, Turkey did not intend to block consensus on the approval of the draft convention. Following careful evaluation, its competent authorities would decide whether Turkey would sign the convention.

6. Egypt placed on record its position on the work of the Ad Hoc Committee at its tenth session and on the draft convention. Egypt had participated, with all commitment and responsibility, in all stages of the negotiation process, pursuing the common objective of fighting against a very serious criminal phenomenon affecting, to varying degrees, all countries of the world. Acting on the principle that, in preparing an international convention, the concerns of some were the concerns of all, Egypt had repeatedly called for including in the convention a clear and express reference to the growing relationship between transnational organized crime and terrorist crimes. That plea was in conformity with various United Nations instruments that had affirmed that fact, including resolution 4 of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Egypt had demonstrated great flexibility regarding the way in which such a reference would be embodied in the convention and had expected that such flexibility would have been met with a greater degree of understanding, so that the convention, being of worldwide scope, would reflect the concerns of all States. Egypt expressed deep regret at the deliberate omission from the text of the convention of a serious dimension of transnational organized crime, represented in the link between such crime and terrorism. Such a lacuna constituted a basic shortcoming in the convention, which would weaken international cooperation in containing and eliminating the phenomenon of terrorism and might prevent the convention from becoming an influential element of the international legal system that served the interests of all.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 3
Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(b) Serious crime as defined in article 2 of this Convention;

where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

C. Interpretative notes

The interpretative notes on article 3 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 7 and 8) are as follows:

(a) During the negotiations of the convention, the Ad Hoc Committee noted with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly. All States participating in the negotiations expressed their determination to deny safe havens to those who engaged in transnational organized crime by prosecuting their crimes wherever they occurred and by cooperating at the international level. The Ad Hoc Committee was also strongly convinced that the convention would constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage, and the growing links between transnational organized crime and terrorist crimes. Finally, the Ad Hoc Committee was of the view that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which was then beginning its deliberations with a view to the development of a comprehensive convention on international terrorism, pursuant to Assembly resolution 54/110 of 9 December 1999, should take into consideration the provisions of the convention.

Paragraph 2 (d)

(b) The term “substantial effects” is intended to cover situations where an offence has had a substantial consequential adverse effect on another State party, for example where the currency of one State party is counterfeited in another State party and the organized criminal group has put the counterfeit currency into global circulation.

D. Attachment

1. At its second session, the Ad Hoc Committee accepted a compromise proposal by its Chairman that a list of offences, which could be either indicative or exhaustive, could be included either in an annex to the convention or in the *travaux préparatoires*. That list would, however, need to be supplemented with proposals from States. (For details, see the report of the Ad Hoc Committee on its second session (A/AC.254/11).)

2. The following list was taken from former paragraph 3 of article 2 (see A/AC.254/4/Rev.1):

> "[3. For the purposes of the application of paragraph 1 above, 'serious crime' shall be deemed to include, among others, acts such as the following:
>
> "*(a)* Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[34]
>
> "*(b)* Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[35]
>
> "*(c)* Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[36]
>
> "*(d)* Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[37] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;
>
> "*(e)* Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;[38]
>
> "*(f)* Acts contained in the United Nations conventions against terrorism;[39]
>
> "*(g)* Illicit manufacture of and traffic in firearms, their parts and components, ammunition, or explosive materials or devices;[40]
>
> "*(h)* Illicit traffic in or stealing of motor vehicles, their parts and components; and
>
> "*(i)* Corruption of public officials and officials of private institutions.][41]"

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[34]United Nations, *Treaty Series*, vol. 1582, No. 27627.

[35]General Assembly resolution 317 (IV), annex. The Philippines proposed that the definition should be expanded, as the 1949 Convention did not address new contemporary forms of trafficking, and proposed that the definition of "traffic in persons" should be elaborated and made clearer, using the international standards formulated in the Slavery Convention signed at Geneva on 25 September 1926 (United Nations, *Treaty Series*, vol. 212, No. 2861) and the 1953 Protocol amending the Slavery Convention (United Nations, *Treaty Series*, vol. 182, No. 2422) and the Platform for Action of the Fourth World Conference on Women (*Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II).

[36]League of Nations, *Treaty Series*, vol. 112, p. 371.

[37]United Nations, *Treaty Series*, vol. 823, No. 11806.

[38]Ibid., vol. 1456, No. 24631.

[39]Some delegations proposed that reference should be made to the Arab Convention on the Suppression of Terrorism of 1998. Some delegations were of the view that the convention, while not intended as an instrument against terrorism, should endeavour to cover the emerging links between terrorist acts and organized crime.

[40]One delegation proposed that the definition in the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (A/53/78, annex) should be used.

[41]Individual delegations proposed the inclusion of illicit traffic in women and children under subparagraph 3 *(b)*, as well as the inclusion of the following as additional subparagraphs: illicit traffic in migrants; illicit traffic in endangered animals; illicit traffic in human body parts; illicit access to computer systems and equipment; piracy; kidnapping for ransom; and murder and other grave offences against persons.

3. The following list was circulated at the second session of the Ad Hoc Committee by Mexico on behalf of several delegations:

(a) Illicit traffic in narcotic drugs and psychotropic substances;

(b) Money-laundering;

(c) Traffic in persons, in particular women and children;

(d) Illicit traffic in and transport of migrants;

(e) Counterfeiting currency;

(f) Illicit traffic in or stealing of cultural objects;

(g) Illicit traffic in or stealing of nuclear material, its use or threatening to misuse it;

(h) Acts of terrorism;

(i) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related material;

(j) Illicit traffic in or stealing of motor vehicles, their parts and components;

(k) Acts of corruption;

(l) Illicit traffic in human organs;

(m) Illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds;

(n) Kidnapping;

(o) Illicit traffic in or stealing of biological and genetic materials.

4. The following list was proposed by Egypt:

(a) Illicit traffic in narcotic drugs and psychotropic substances and money-laundering;

(b) Traffic in persons, in particular women and children;

(c) Illicit traffic in and transport of migrants;

(d) Counterfeiting currency;

(e) Illicit traffic in or stealing of cultural objects;

(f) Illicit traffic in or stealing of nuclear material, its use or threatening to misuse it;

(g) Acts of terrorism as defined in the pertinent international conventions;

(h) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related material;

(i) Illicit traffic in or stealing of motor vehicles, their parts and components;

(j) Acts of corruption;

(k) Illicit traffic in human body organs;

(l) Illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds;

(m) Illicit traffic in or stealing of biological and genetic materials.

5. Algeria, Egypt, India, Mexico and Turkey proposed the following indicative list of offences to be included in an annex to the convention (see A/AC.254/5/Add.26):

(a) Illicit trafficking in narcotic drugs and psychotropic substances;

(b) Trafficking in persons, in particular women and children;

(c) Illicit trafficking in and transport of migrants;

(d) Counterfeiting of currency;

(e) Illicit trafficking in or stealing of cultural objects;

(f) Illicit trafficking in or stealing of nuclear materials, their use or threat to misuse them;

(g) Acts of terrorism as defined in the pertinent international conventions;

(h) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

(i) Illicit trafficking in or stealing of motor vehicles, their parts and components;

(j) Illicit trafficking in human organs and body parts;

(k) All types of computer and cyber crimes and illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds;

(l) Kidnapping, including kidnapping for ransom;

(m) Illicit trafficking in or stealing of biological and genetic materials;

(n) Extortion;

(o) Fraud relating to financial institutions.

Article 4. Protection of sovereignty

Notes by the Secretariat

1. For the origin of the text of article 4, see article 3 of the convention and under article 1 of the convention, the proposal submitted by Germany in the context of the preparatory stage of the negotiations before the establishment of the Ad Hoc Committee (A/AC.254/5). At the seventh session of the Ad Hoc Committee, Poland proposed that paragraphs 3 and 4 of article 2 of the draft convention should be placed in a separate article (see article 3 of the convention, footnote 32). At the tenth session of the Ad Hoc Committee, there was agreement that these paragraphs should form new article 2 ter, which was subsequently renumbered and became article 4 of the convention (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999).

A. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5. Criminalization of participation in an organized criminal group

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 4
"Offences and sanctions

"1. Each State Party shall undertake to treat, in conformity with its domestic legal system, the following as criminal offences carrying effective, proportionate and deterrent sanctions:

"*(a)* Participation in a criminal organization;

"*(b)* Money-laundering.

"2. For the purposes of applying paragraph 1 *(b)* of this article:

"*(a)* The question of whether the principal offence falls under the criminal jurisdiction of the State Party shall be deemed irrelevant;

"*(b)* It may be stipulated that the offence of money-laundering does not apply to the persons who have committed the principal offence;

"*(c)* Knowledge, intention or final purpose, as constituents of the offence of money-laundering, may be deduced from objective factual circumstances.

"3. Each State Party shall aggravate sentences for crimes or offences committed within the framework of [in relation with] a criminal organization as defined under article 2 of this Convention.

"4. Each State Party shall also adopt measures to make the following liable to criminal sanctions:

"*(a)* Attempting to commit offences as defined under paragraphs 1 and 3 of this article;

"*(b)* Acting as an accomplice to the offences mentioned under paragraph 1 *(b)* and paragraph 3 of this article;

"*(c)* Knowingly profiting from a crime or offence committed by a criminal organization."

Rolling text (A/AC.254/4)

"Article 3
"Participation in a criminal organization[1]

"1. Each State Party shall undertake, in accordance with the fundamental principles of its domestic legal system, to make punishable one or both of the following types of conduct:

"*(a)* Conduct by any person consisting of an agreement with one or more persons that an activity should be pursued, which, if carried out, would amount to the commission of crimes or offences that are punishable by imprisonment or other deprivation of liberty of at least [...] years; or

"*(b)* Conduct by any person who participates in a criminal organization, where such participation is intentional and is either with the aim of furthering the general criminal activity or criminal purpose of the group or made in the knowledge of the intention of the group to commit offences.

"2. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Rolling text (A/AC.254/4/Rev.1)

"Article 3
"Participation in a criminal organization

"Option 1

"1. Each State Party shall undertake, in accordance with the fundamental principles of its domestic legal system, to make punishable one or both of the following types of conduct:

"*(a)* Conduct by any person consisting of an agreement with one or more persons that an activity should be pursued, which, if carried out, would amount to the commission of crimes or offences that are punishable by imprisonment or other deprivation of liberty of at least [...] years; or

"*(b)* Conduct by any person who participates in a criminal organization, where such participation is intentional and is either with the aim of furthering the general criminal activity or criminal purpose of the group or made in the knowledge of the intention of the group to commit offences.

"2. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

[1]It was suggested that this article provided a good basis for discussion, since it served as a bridge between civil and common law systems. However, one delegation considered the concept to be complex, requiring further analysis.

"Option 2[2]

"1. Each State Party shall establish as criminal offences the following conduct:

"*(a)* Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group; and

"*(b)* Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

"*(i)* Agreeing with one or more other persons to commit a serious crime for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement;

"(ii) Conduct by a person who intentionally, and with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes active part in:

"a. Activities of an organized criminal group referred to in article 2 bis of this Convention;

"b. Other activities of the group in the knowledge that the person's participation will contribute to the achievement of the above-described criminal aim.

"2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances."

Second session: 8-12 March 1999

Rolling text (A/AC.254/4/Rev.2)

"Article 3[3]
"[Criminalization of] participation in an [organized criminal group][4]

"1. Each State Party shall[5] establish as criminal offences[6] the following conduct:

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[2]Option 2 was submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.254/L.4) during the first session of the Ad Hoc Committee. However, the content of the article was not discussed by the Ad Hoc Committee at that session and the draft of option 2 was used as a working paper for comment during the second session of the Ad Hoc Committee.

[3]Japan provided a written proposal on this article (A/AC.254/5/Add.4), which was supported by several delegations. The primary points of difference are noted in the text in brackets. The Chairman indicated that informal consultations would be conducted on the possibility of integrating the proposal into the present text. Colombia submitted the following proposal for the content of this article:

"1. Each State Party shall establish as a crime or, if already established, shall punish with a more severe penalty the organizing, directing, aiding, abetting, facilitating, counselling or instigating the commission of a serious crime in which an organized group with a transnational character participates.

"2. States Parties shall make punishable all forms of participation and criminal association for the crimes covered by this Convention.

"3. States Parties shall make punishable acts committed intentionally and acts that by their nature lend themselves to serious negligence."

[4]Some delegations proposed the insertion of "transnational" into the title of this article.

[5]Some delegations proposed the insertion of a reference to the establishment of the offences "in accordance with the fundamental legal principles of its domestic legal system". This proposal was subsequently supported by the Syrian Arab Republic (see A/AC.254/L.131) and Cameroon (see A/AC.254/L.134). Other delegations regarded this as unnecessary. Some delegations proposed that a general paragraph applicable to all the articles in the convention should be drafted, noting that all measures taken by the States parties should be in accordance with their fundamental legal principles.

[6]Some delegations proposed that this criminalization obligation should extend to the setting of a punishment latitude that took into consideration the seriousness of the offence.

"*(a)* Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime[7] involving an organized criminal group;[8] and [, subject to the fundamental principles of its domestic legal system,][9]

"*(b)* Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

"(i) Agreeing with one or more other persons to commit[10] a serious crime [involving an organized criminal group][11] for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit[12] and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement;

"(ii) Conduct by a person who intentionally, and with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit[13] the crimes in question, takes active part in:

"a. Criminal activities of an organized criminal group referred to in article 2 bis of this Convention;[14]

"b. Other activities of the group in the knowledge that the person's participation will contribute to the achievement of the above-described criminal aim;

"[(iii) Participation in acts of an organized criminal group that has the aim of committing a serious crime, in the knowledge that the person's participation will contribute to the achievement of the crime.][15]

"2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances."[16]

Seventh session: 17-28 January 2000

Notes by the Secretariat

1. The version of article 3 contained in document A/AC.254/4/Rev.2 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.3-6).

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[7]Some delegations proposed that both subparagraphs 1 *(a)* and *(b)* should refer to serious offences "covered by the present Convention". One delegation proposed that the article should apply only to deliberate offences and not to offences committed through negligence.

[8]One delegation noted that organizing, abetting and so on were forms of participation in an offence and were generally not regarded as criminal offences in themselves.

[9]Proposal of Japan (see A/AC.254/5/Add.4).

[10]One delegation proposed that the word "commit" should be replaced with the words "plan or commit".

[11]Proposal of Japan (see A/AC.254/5/Add.4).

[12]Some delegations noted also in this connection that the phrase "financial or other material benefit" was too limited. Two delegations proposed to insert the words "or to any other purpose" (see, for example, the statement submitted by the United Arab Emirates (A/AC.254/L.19)).

[13]One delegation proposed that the word "commit" should be replaced with the words "plan or commit".

[14]One delegation proposed that the phrase "referred to in article 2 bis of this Convention" should be deleted as unnecessary.

[15]Proposal of Japan (see A/AC.254/5/Add.4).

[16]One delegation proposed that this paragraph should be deleted, on the ground that its substance fell within the purview of the courts. Another delegation proposed that this paragraph should be moved to article 6.

Proposal of the informal working group on article 3 (A/AC.254/L.139)

"Article 3
"[Criminalization of] participation in an [organized criminal group]

"1. Paragraph 1 *(b) (i)* should read as follows:

'(i) Agreeing with one or more persons to commit a serious crime for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;'

"2. An additional paragraph should be added to article 3 to read:

'(...) A State whose laws require involvement of an organized criminal group for purposes of the offences established under paragraph 1 *(b)* (i) of this article shall ensure that its domestic laws cover all serious crimes involving organized criminal groups. Such States, as well as States whose laws require an act in furtherance of the agreement for purposes of the offences established under paragraph 1 *(b)* (i), shall so advise the Secretary-General of the United Nations at the time of signature, ratification, acceptance or approval of or accession to this Convention.'

"3. Paragraph 1 *(b)* (iii) and the bracketed text in paragraph 1 *(a)* should be deleted."

Rolling text (A/AC.254/4/Rev.7)

"Article 3
"Criminalization of participation in an organized criminal group

"1. Each State Party shall establish as criminal offences, when committed intentionally:

"*(a)* Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

"(i) Agreeing with one or more other persons to commit a serious crime for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

"(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes active part in:

"a. Criminal activities of an organized criminal group as defined in article 2 bis of this Convention;

"b. Other activities of the group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

"*(b)* Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

"2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

"3. A State whose laws require involvement of an organized criminal group for purposes of the offences established under paragraph 1 *(a)* (i) of this article shall ensure that its domestic laws cover all serious crimes involving organized criminal groups. Such States, as well as States whose laws require an act in furtherance of the agreement for purposes of the offences established under paragraph 1 *(a)* (i), shall so advise the Secretary-General of the United Nations at the time of their signature, ratification, acceptance or approval of or accession to this Convention."

Notes by the Secretariat

2. At its seventh session, the Ad Hoc Committee approved article 3 of the draft convention, as amended. Colombia expressed concern that the formulation of paragraph 3 could be interpreted to permit unilateral declarations by States parties that might amount to reservations (see A/AC.254/25, para. 17). At its tenth session, the Ad Hoc Committee considered, finalized and approved article 3, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 5
Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 *(a)* (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 *(a)* (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

C. Interpretative note

The interpretative note on article 5 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 9) is as follows:

The "other measures" mentioned in articles 5, 6, 8 and 23 are additional to legislative measures and presuppose the existence of a law.

Article 6. Criminalization of the laundering of proceeds of crime

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

See this document among the preparatory texts of article 5 of the convention, where money-laundering is included among the offences criminalized by this instrument.

Rolling text (A/AC.254/4)

"Article 4
"Money-laundering[1]

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

"*(a)* The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

"*(b)* The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is the proceeds of crime;

"and, subject to its constitutional principles and basic concepts of its legal system,

"*(c)* The acquisition, possession or use of property, knowing, at the time of receipt, that such property was the proceeds of crime;

"*(d)* Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

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[1]At the informal preparatory meeting of the Ad Hoc Committee held in Buenos Aires from 31 August to 4 September 1998, it had been suggested that the lack of a definition of money-laundering in this article would need to be addressed. It had also been suggested that such a definition should cover a broad range of predicate offences.

"2. For the purposes of implementing or applying paragraph 1 of this article:

"*(a)* It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party;

"*(b)* It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

"*(c)* Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

"3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

"*(a)* Ought to have assumed that the property was the proceeds of crime;

"*(b)* Acted for the purpose of making a profit;

"*(c)* Acted for the purpose of promoting the perpetration of further criminal activity.

"[4. States Parties shall take appropriate measures to ensure that assets generated by illegal activity or its proceeds are not made legal and shall take legal measures to ensure that:

"*(a)* A person convicted as a member of organized crime shall prove the legality of the purchase of goods that belong to him [or her] or in respect of which he [or she] acts as owner, otherwise they shall be confiscated;[2]

"*(b)* Goods that are the proceeds of the illegal activities of organized crime cannot be transferred as an inheritance, bequest or gift or in any other way;

"*(c)* Goods that are the proceeds of illegal activities will be deemed illegal, and legal principles shall not apply to them;

"*(d)* States shall establish fines as penalties in proportion to the sums obtained by the activities of organized crime.]

"[5. States Parties shall adopt appropriate measures to apply instruments that relate to money-laundering to banking or financial markets, including stock exchanges, bureaux de change, etc.]

"6. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

[2]Some delegations expressed reservations stemming from difficulties of a constitutional nature regarding reversal of the burden of proof.

Rolling text (A/AC.254/4/Rev.1)

"Article 4[3]
"Money-laundering[4]

"Option 1

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

"*(a)* The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

"*(b)* The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is the proceeds of crime; and, subject to its constitutional principles and basic concepts of its legal system;

"*(c)* The acquisition, possession or use of property, knowing, at the time of receipt, that such property was the proceeds of crime;

"*(d)* Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

"Option 2[5]

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

"*(a)* The acquisition, disposal, administration, safe-keeping, exchange, deposit, guaranteeing, investment, transport, possession, granting or transfer of funds, rights or property of any kind, knowing that such funds, rights or property are derived from, or represent the proceeds of, crime, for the purpose of concealing, disguising or preventing the discovery of the illicit origin thereof or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

"*(b)* The concealment or attempted concealment, disguise or prevention of the discovery of the origin, destination, ownership, true nature, source, location, disposition, movement or rights with respect to funds, rights or property of any kind, knowing that such funds, rights or property are derived from, or represent the proceeds of, crime;

"*(c)* The possession or use of funds, rights or property of any kind, knowing, at the time of receipt or subsequently, that such funds, rights or property are derived from, or represent the proceeds of, crime;

"*(d)* Participation in, association with or conspiracy to commit, attempting to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

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[3]This article was to be considered by the Ad Hoc Committee at its third session.

[4]See footnote 1 above.

[5]Option 2 was based on a proposal submitted by Mexico (see A/AC.254/L.7).

"2. For the purposes of implementing or applying paragraph 1 of this article:

"*(a)* It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party;

"*(b)* It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

"Option 1

"*(c)* Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances.

"Option 2

"*(c)* Knowledge, intent or purpose required as an element of the offences set forth in that paragraph may be inferred from strong evidence or objective, factual circumstances, the offender being required to give proof of the legitimate origin of the funds, rights or property.[6]

"3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

"*(a)* Ought to have assumed that the property was the proceeds of crime;

"*(b)* Acted for the purpose of making a profit;

"*(c)* Acted for the purpose of promoting the perpetration of further criminal activity.

"[4. States Parties shall take appropriate measures to ensure that assets generated by illegal activity or its proceeds are not made legal and shall take legal measures to ensure that:

"*(a)* A person convicted as a member of organized crime shall prove the legality of the purchase of goods that belong to him [or her] or in respect of which he [or she] acts as owner, otherwise they shall be confiscated;[7]

"*(b)* Goods that are the proceeds of the illegal activities of organized crime cannot be transferred as an inheritance, bequest or gift or in any other way;

"*(c)* Goods that are the proceeds of illegal activities will be deemed illegal, and legal principles shall not apply to them;

"*(d)* States shall establish fines as penalties in proportion to the sums obtained by the activities of organized crime.]

"Option 1

"[5. States Parties shall adopt appropriate measures to apply instruments that relate to money-laundering to banking or financial markets, including stock exchanges, bureaux de change etc.]

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[6]Option 2 was based on a proposal submitted by Mexico (see A/AC.254/L.7).

[7]See footnote 2 above.

"Option 2[8]

"[5. States Parties shall adopt appropriate measures to apply instruments that detect money-laundering at banking and non-banking financial institutions.]

"6. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Third session: 28 April-3 May 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 4 of the revised draft convention contained in document A/AC.254/4/Rev.2, which was the same as that contained in document A/AC.254/4/Rev.1.

Rolling text (A/AC.254/4/Rev.3)

"Article 4
"Money-laundering

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, [when committed intentionally][9] [and subject to its constitutional principles and basic concepts of its legal system]:[10,11]

[8]Option 2 was based on a proposal submitted by Mexico (see A/AC.254/L.7).

[9]At the third session of the Ad Hoc Committee, there was extensive discussion on the formulation of paragraph 1, which would require States parties to criminalize certain acts when committed intentionally, and of paragraph 3, which would suggest that States parties might, as an option, criminalize certain acts when committed through negligence. Several delegations underlined the need to review those formulations, in particular whether the phrase "when committed intentionally" was needed in paragraph 1 (see, for example, the statement submitted by Spain contained in document A/AC.254/5/Add.5).

[10]Some delegations suggested that paragraph 1 provided an adequate definition of the offence of money-laundering. Other delegations suggested that a definition could be inserted in article 2 bis. Some delegations expressed caution, stating that, if such a separate definition was provided, it should be in line with paragraph 1 of the article. Some delegations suggested that the following definition, provided by Mexico in article 5 of the draft protocol on money-laundering supplementary to the United Nations Convention against Transnational Organized Crime (A/AC.254/L.23) could be inserted in article 2 bis: "'Money-laundering' means any act carried out directly or through an intermediary with a view to the acquisition, disposal, administration, safe keeping, exchange, deposit, guaranteeing, investment, transport, possession, granting or transfer of funds, rights or property of any kind, knowing that such funds, rights or property are derived from, or represent the proceeds of, crime, for the purpose of concealing, disguising or preventing the discovery of the illicit origin thereof or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions."

[11]Some delegations suggested that the phrase "and subject to its constitutional principles and basic concepts of its legal system" should apply to all of paragraph 1, while other delegations suggested that, in line with the 1988 Convention and the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the phrase should follow subparagraph *(b)* and thus apply only to subparagraph *(c)* and any subsequent subparagraphs.

"*(a)* The conversion or transfer of property, knowing that such property is the proceeds of crime,[12] for the purpose of concealing or disguising [or preventing the discovery of][13] the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence[14] to evade the legal consequences of his or her action;

"*(b)* The concealment or disguise [or prevention of the discovery][15] of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

"*(c)* The acquisition, possession or use [disposal, administration, safe keeping, exchange, guaranteeing, investment, transfer or transport][16] of property, knowing, at the time of receipt [or subsequently],[17] that such property is the proceeds of crime;

"*(d)* Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article;

"[*(e)* Engaging in conduct that would constitute an offence under subparagraph 1 *(a)*, *(b)*, *(c)* or *(d)* of this article, had the property been derived from [*insert a description of the type of predicate offences governed by this article*], where a law enforcement official or a person acting at his or her direction represented the property to be so derived.][18]

"[1 bis. Notwithstanding paragraph[s] 1 [and 2 *(a)*] of this article, where a State Party considers the laundering of the proceeds of a type of offence generally not to arise from or be associated with the activities of organized criminal groups, the State Party shall not be required to establish the laundering of the proceeds of such offence as a criminal offence under its domestic law. The State Party shall periodically review its domestic law with a view to expanding the applicability of laws against money-laundering to the extent required to combat organized criminal groups effectively.][19]

"2. For the purposes of implementing or applying paragraph 1 of this article:

"*(a)* It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party;[20]

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[12]Some delegations suggested that the concept of "proceeds of crime" should be clarified in this connection. There should also be clarification in respect of the extent of the knowledge of the offender required under this subparagraph, that is, whether it would require that the offender knew only that the proceeds were the result of a certain activity or that the offender also knew that the activity was a crime. The issue of dual criminality would also arise in that connection.

[13]Addition proposed by India at the third session of the Ad Hoc Committee.

[14]Some delegations emphasized that the scope of predicate offences required consideration. Other delegations noted that the definition of "predicate offence" provided in subparagraph *(i)* of article 2 bis and the definition of "proceeds of crime" provided in subparagraph *(f)* of article 2 bis might require clarification in this respect.

[15]Addition proposed by India at the third session of the Ad Hoc Committee.

[16]Ibid.

[17]The words "or subsequently" raise the issue of the right of persons who acquired such property in good faith and the provision should be revised to protect the legitimate rights of such bona fide persons. One delegation proposed that these words should be amended to read "or subsequently, after it has been established whether or not such persons acted bona fide".

[18]Addition proposed by the United States (see A/AC.254/L.24). Several delegations noted that both subparagraph *(e)* of paragraph 1 and paragraph 1 bis required further study. Some delegations suggested that subparagraph *(e)* could be transferred to article 15 (Special investigative techniques). Some delegations expressed reservations about whether the present wording could be interpreted to provide excessive discretion to law enforcement authorities.

[19]Addition proposed by the United States (see A/AC.254/L.24).

[20]Some delegations noted that, in connection with this subparagraph, the question of dual criminality should be addressed, as should the scope of application.

"[*(b)* It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;][21]

"*(c)* Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances.[22]

"3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases:

"*(a)* Where the offender ought to have assumed that the property was the proceeds of crime;

"*(b)* Where the offender acted for the purpose of making a profit; or

"*(c)* Where the offender acted for the purpose of promoting the perpetration of further criminal activity.[23]

"[Subparagraphs of old paragraph 4 moved or deleted][24]

[Old paragraph 5 moved to article 4 bis]

"4. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Fifth session: 4-15 October 1999

Notes by the Secretariat

2. Delegations based their comments on the text of article 4 of the revised draft convention contained in document A/AC.254/4/Rev.4, which was the same as that contained in document A/AC.254/4/Rev.3.

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[21]Some delegations suggested that this subparagraph should be deleted (see, for example, the statement submitted by Spain contained in document A/AC.254/5/Add.5). Other delegations supported its retention, in particular in view of the parallel wording in the 1990 Council of Europe Convention.

[22]Option 2 of this subparagraph was deleted. This option had contained wording regarding the reversal of the burden of proof. Many delegations at the third session of the Ad Hoc Committee suggested that the reversal of the burden of proof, while unacceptable in respect of the presumption of innocence and thus as a basis for conviction, could be used after the offender had been convicted, in considering the question of confiscation of proceeds. This issue was dealt with in paragraph 7 of article 6 (Confiscation).

[23]Some delegations suggested that this paragraph required considerable clarification. Other delegations suggested that the phrase "ought to have assumed that the property was the proceeds of crime" could be replaced, for example, with the words "should have assumed that the property was the proceeds of crime" or "acted in violation of his or her duty to act", or that the paragraph could state only as follows: "Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, when committed through negligence." It was also suggested that the concept of negligence should be defined in this connection. Some delegations noted that the words "acted for the purpose of making a profit" and "acted for the purpose of promoting the perpetration of further criminal activity" referred to aggravating factors that were not at all connected with the concept of negligence otherwise covered by this paragraph, and suggested that they should be placed in a separate paragraph.

[24]Old subparagraph 4 *(a)* was covered by paragraph 7 of article 6. Some delegations objected to old subparagraph 4 *(b)* on the grounds that it was in conflict with fundamental principles of justice, including the rights of bona fide third parties. Old subparagraph 4 *(c)* also raised problems vis-à-vis the rights of bona fide third parties. Old subparagraph 4 *(d)*, on the level of punishment, was deleted on the grounds that it only referred to one sentencing option, fines, and that other factors also should be considered in sentencing.

Netherlands (A/AC.254/L.69)

The Netherlands proposed that article 4, paragraph 1, should be amended to read as follows:

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

"*(a)* The conversion or transfer of property, knowing or suspecting that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

"*(b)* The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing or suspecting that such property is the proceeds of crime; and, subject to its constitutional principles and basic concepts of its legal system:

[Amended placement of clause]

"*(c)* The acquisition, possession or use of property, knowing or suspecting, at the time of receipt [or subsequently], that such property was the proceeds of crime;

"*(d)* Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article."

Rolling text (A/AC.254/4/Rev.5)

"Article 4
"Laundering offences[25]

"1. Each State Party shall adopt, in conformity with its constitutional principles, such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:[26]

"*(a)* The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising [or preventing the discovery of] the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

"*(b)* The concealment or disguise [or prevention of the discovery] of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

[25]China indicated that it had difficulties of a linguistic nature with this title.

[26]As indicated above, at the third session, Mexico had provided a definition of money-laundering (see A/AC.254/L.23). At its fifth session, the Ad Hoc Committee accepted the proposal of its Chairman that some of the elements in that definition could be usefully included either in the *travaux préparatoires* or the commentary to the convention.

"and, subject to the basic concepts of its legal system:

"*(c)* The acquisition, possession or use [disposal, administration, safe keeping, exchange, guaranteeing, investment, transfer or transport] of property, knowing, at the time of receipt [or subsequently], that such property is the proceeds of crime;

"*(d)* Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.[27]

"[1 bis. States Parties shall ensure that their domestic laws on implementing this article apply to the proceeds of those crimes associated with organized criminal groups and also to the proceeds of other serious crimes.[28] States Parties shall, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, by declaration addressed to the Secretary-General of the United Nations, specify the scope of the crimes covered. States Parties shall periodically review their domestic laws on implementing this article to ensure that they apply to an appropriately broad range of offences and shall, if appropriate, subsequently revise their declaration.][29]

"2. For the purposes of implementing or applying paragraph 1 of this article:

"*(a)* It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party, provided that it is punishable under the domestic law of the State where the offence was committed;

"*(b)* Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances.[30]

"3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

"*(a)* Ought to have assumed that the property was the proceeds of crime;[31]

"*(b)* Acted for the purpose of making a profit; or

"*(c)* Acted for the purpose of promoting the perpetration of further criminal activity.

"[3 bis. Where a law enforcement official or a person acting at his or her direction, in accordance with article 15 of this Convention, has represented property to be the proceeds of crime, the fact that the property did not actually constitute the pro-

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[27]As indicated above, the United States had submitted a proposal for a new subparagraph, 1 *(e)* (see A/AC.254/L.24). Following the discussion at the fifth session of the Ad Hoc Committee, that delegation undertook to consider the possibility of reformulating the provision and resubmitting it in connection with article 15.

[28]An alternative formulation could be "crimes covered by this convention".

[29]Paragraph 1 bis was revised by the United States, pursuant to informal consultations with a number of interested delegations, and was not discussed in detail at the fifth session of the Ad Hoc Committee (see A/AC.254/L.74). The term "serious crime" might be used elsewhere in the draft convention with a meaning that might not be appropriate in the context of this revision (e.g. a definition for the purposes of article 2 bis that encompasses all crimes punishable by a deprivation of liberty of at least [...] years). If this was the case, the refinements in this paragraph or elsewhere in the draft convention would need to clarify that "crimes" within the scope of this provision would not necessarily encompass all crimes under article 2.

[30]At the fifth session of the Ad Hoc Committee, Austria, Denmark, Finland and Sweden supported the retention of former paragraph 2 *(b)* of this article (contained in document A/AC.254/4/Rev.4).

[31]Japan proposed the deletion of this subparagraph.

ceeds of crime shall not be a defence to the offences described in paragraph 1 of this article.][32]

"4. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Seventh session: 17-28 January 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 4 of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5. In a statement submitted at the sixth session of the Ad Hoc Committee (A/AC.254/L.115), the Russian Federation proposed the title "Criminalization of laundering of the proceeds of crime" for this article.

Rolling text (A/AC.254/4/Rev.7)

"Article 4[33]
"Criminalization of the laundering of proceeds of crime

"1. Each State Party shall adopt, in conformity with its constitutional principles, such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

"*(a)* The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising[34] the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

"*(b)* The concealment or disguise[35] of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

"and, subject to the basic concepts of its legal system:

"*(c)* The acquisition, possession or use [disposal, administration, safe keeping, exchange, guaranteeing, investment, transfer or transport] of property, knowing, at the time of receipt, that such property is the proceeds of crime;

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[32]Proposal submitted by the United States at the fifth session of the Ad Hoc Committee as a reformulation of subparagraph 1 *(e)*, which was deleted. The proposal was not discussed in detail at the fifth session of the Ad Hoc Committee.

[33]The text of this article was revised pursuant to discussion at the informal consultations held during the seventh session of the Ad Hoc Committee. Except where indicated otherwise, this revised text was provisionally approved at the informal consultations and recommended by the Chairmen of the informal consultations as the basis for consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[34]The words "concealing or disguising" should be understood to include preventing the discovery of the illicit origins of property.

[35]Footnote 34 also applies to the words "concealment or disguise" contained in this subparagraph.

"*(d)* Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

"[1 bis. States Parties shall ensure that their domestic laws on implementing this article apply to the proceeds of those crimes associated with organized criminal groups and also to the proceeds of other serious crimes. States Parties shall, at the time of signature, ratification, acceptance or approval of or accession to the Convention, by declaration addressed to the Secretary-General of the United Nations, specify the scope of the crimes covered. States Parties shall periodically review their domestic laws on implementing this article to ensure that they apply to an appropriately broad range of offences and shall, if appropriate, subsequently revise their declaration.][36]

"2. For the purposes of implementing or applying paragraph 1 of this article:

"*(a)* It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party, provided that it is punishable under the domestic law of the State where the offence was committed;

"*(b)* Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 may be inferred from objective factual circumstances;

"*(c)* It may be provided that the offences set forth in paragraph 1 do not apply to the persons who committed the predicate offence.[37]

[Old paragraphs 3 and 3 bis were deleted][38]

"3. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."[39]

Eighth session: 21 February-3 March 2000

Recommendations of the informal working group on article 4, paragraph 1 bis, convened during the seventh session of the Ad Hoc Committee (A/AC.254/L.149)

"[The current text of paragraph 1 bis would be deleted]

[36]The text of paragraph 1 bis was revised by the United States, pursuant to informal consultations with a number of interested delegations at the fifth session of the Ad Hoc Committee. Pursuant to further discussion at the informal consultations held during the seventh session of the Ad Hoc Committee, a proposal for the deletion of paragraph 1 bis and the amendment of paragraph 2 would be available for consideration by the Ad Hoc Committee at its eighth session (see below).

[37]At the informal consultations held during the seventh session of the Ad Hoc Committee, Sweden undertook to reformulate this subparagraph in order to alleviate concerns about its clarity.

[38]The substance of paragraph 3 bis would be taken up in connection with article 15.

[39]In order for this paragraph to be applicable to all offences to be established under this convention, it should be moved to article 6, after being amended to read as follows: "Nothing contained in this Convention shall affect the principle that the description of the offences established under this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the law of a State Party and that such offences shall be prosecuted and punished in conformity with that law" (proposal submitted by the United States (A/AC.254/L.141)).

"2. For purposes of implementing or applying paragraph 1 of this article:

"*(a)* States Parties shall seek to apply paragraph 1 to the widest range of predicate offences;

"*(b)* States Parties shall include as predicate offences:

"(i) [All serious crimes] [All serious crimes involving an organized criminal group and the offences established in articles 3, 4 ter and 17 bis of this Convention];[40] or

"(ii) If all serious crimes are not included, at a minimum, a comprehensive range of serious offences, including all offences associated with organized criminal groups and all offences that generate significant proceeds;

"*(c)* States Parties implementing subparagraph *(b)* (ii) above shall furnish copies or a description of their laws to the Secretary-General of the United Nations;

"*(d)* [*Still to be addressed in the issue of foreign predicate offences; see the current text of paragraph 2 (a)*];

"*(e)* If required by the basic principles of a State Party's penal law, then it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

"*(f)* Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances."[41]

Mexico (A/AC.254/L.161)

Mexico proposed to replace the text of paragraph 2 *(b)* of article 4 contained in document A/AC.254/L.149 with the following:

"*(b)* States Parties shall include as predicate offences all serious crimes as defined in article 2 and the offences established in articles 3, 4 ter and 17 bis of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, these shall, at a minimum, include a comprehensive range of offences associated with organized criminal groups;"

Finland (A/AC.254/L.162)

Finland proposed to amend paragraphs 2 *(a)* to *(d)* of article 4 as they appeared in document A/AC.254/L.149 to read as follows.

"2. For purposes of implementing or applying paragraph 1 of this article:

"*(a)* States Parties shall seek to apply paragraph 1 to the widest range of predicate offences;

"*(b)* States Parties shall include as predicate offences all serious crimes [as defined in articles 2 and 2 bis] and the offences established in articles 3, 4 ter and

[40]Depending on the outcome of discussions on article 2, the latter bracketed words might be replaced with the words "crimes covered by this convention".

[41]Current text of paragraph 2 *(b)*.

17 bis of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include a comprehensive range of offences associated with organized criminal groups;

"*(c)* For purposes of subparagraph *(b)*, predicate offences shall include offences committed both within and outside the criminal jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences, provided that the relevant conduct is a criminal offence under the law of the State where it is committed and would be a criminal offence under the law of the State Party implementing or applying this article if committed there;

"*(d)* States Parties shall furnish copies or descriptions of their laws implementing this article to the Secretary-General of the United Nations."

Rolling text (A/AC.254/4/Rev. 8)

"Article 4
"Criminalization of the laundering of proceeds of crime

"1. Each State Party shall adopt, in conformity with its constitutional principles, such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

"*(a)* The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

"*(b)* The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

"and, subject to the basic concepts of its legal system:

"*(c)* The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

"*(d)* Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

"2. For purposes of implementing or applying paragraph 1 of this article:

"*(a)* States Parties shall seek to apply paragraph 1 to the widest range of predicate offences;

"*(b)* States Parties shall include as predicate offences all serious crimes [as defined in articles 2 and 2 bis] and the offences established in articles 3, 4 ter and 17 bis of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include a comprehensive range of offences associated with organized criminal groups;[42]

[42]The phrase "associated with organized criminal groups" is intended to indicate criminal activity of the type in which organized criminal groups engage.

"*(c)* For the purposes of subparagraph *(b)*, predicate offences shall include offences committed both within and outside the criminal jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences, provided that the relevant conduct is a criminal offence under the law of the State where it is committed and would be a criminal offence under the law of the State Party implementing or applying this article had it been committed there;[43]

"*(d)* States Parties shall furnish copies or descriptions of their laws implementing this article to the Secretary-General of the United Nations;

"*(e)* If required by the basic principles of a State Party's penal law, then it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;[44]

"*(f)* Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances.

"[Old paragraphs 3 and 3 bis were deleted]

"3. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Notes by the Secretariat

4. At its eighth session, the Ad Hoc Committee provisionally approved article 4 (with the exception of subparagraph *(c)* of paragraph 2, which remained under review (see A/AC.254/28, para. 12)). At its tenth session, the Ad Hoc Committee considered, finalized and approved article 4, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

[43]This subparagraph remained under review. At the eighth session of the Ad Hoc Committee, several delegations expressed concern about whether the current formulation of this subparagraph would meet the standards of clarity required for an obligatory provision.

[44]This subparagraph takes into account legal principles of several States where prosecution or punishment of the same person for both the predicate offence and the money-laundering offence is not permitted. Those States confirmed that they did not refuse extradition, mutual legal assistance or cooperation for purposes of confiscation solely because the request was based on a money-laundering offence the predicate offence of which was committed by the same person.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 6
Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph *(b)*, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

C. Interpretative notes

The interpretative notes on article 6 of the Convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1), paras. 10-13) are as follows:

(a) The terms "laundering of proceeds of crime" and "money-laundering" are understood to be equivalent.

Paragraphs 1 (a) and (b)

(b) The terms "concealing or disguising" and "concealment or disguise" should be understood to include preventing the discovery of the illicit origins of property.

Paragraph 2 (b)

(c) The words "associated with organized criminal groups" are intended to indicate criminal activity of the type in which organized criminal groups engage.

Paragraph 2 (e)

(d) Subparagraph *(e)* takes into account legal principles of several States where prosecution or punishment of the same person for both the predicate offence and the money-laundering offence is not permitted. Those States confirmed that they did not refuse extradition, mutual legal assistance or cooperation for purposes of confiscation solely because the request was based on a money-laundering offence the predicate offence of which was committed by the same person.

Article 7. Measures to combat money-laundering

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 4 bis
"Measures to combat money-laundering[1]

1. "Each State Party shall institute a domestic regulatory regime for financial institutions[2] doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

"*(a)* The licensing and periodic examination of such institutions;

"*(b)* The elimination of bank secrecy laws that may impede the operation of States Parties' anti-money-laundering programmes;[3]

"*(c)* The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

"*(d)* Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

"*(e)* Requiring such institutions to report suspicious or unusual transactions.

"2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

"3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their

[1]There was no discussion on this article during the informal preparatory meeting held in Buenos Aires in 1998. One delegation expressed the view that this issue should be viewed taking into account other regional initiatives.

[2]The term "financial institution" includes, at a minimum, banks, other depository institutions and appropriate non-bank providers of financial services (such as securities dealers or brokers, commodities futures dealers or brokers, currency dealers and exchangers, fund transmitters and casinos).

[3]At the informal preparatory meeting held in Buenos Aires in 1998, one delegation expressed reservations regarding the elimination of bank secrecy.

borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.

"4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

"5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the 40 recommendations of the Financial Action Task Force on Money Laundering, as well as other relevant anti-money-laundering initiatives endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

"6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering."

Rolling text (A/AC.254/4/Rev.1)

"Article 4 bis[4]
"Measures to combat money-laundering

"Option 1

"1. Each State Party shall institute a domestic regulatory regime for financial institutions doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

"*(a)* The licensing and periodic examination of such institutions;

"*(b)* The elimination of bank secrecy laws that may impede the operation of States Parties' anti-money-laundering programmes;

"*(c)* The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

"*(d)* Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

"*(e)* Requiring such institutions to report suspicious or unusual transactions.

[4]This article was to be considered by the Ad Hoc Committee at its third session.

"Option 2[5]

"1. Each State Party shall institute the necessary regulations for banking and non-banking financial institutions within its jurisdiction to prevent and detect money-laundering. Such regimes shall include the following minimum requirements:

"*(a)* The granting of licences or authorization to conduct financial activities;

"*(b)* The lifting of bank secrecy in cases involving measures for the prevention and investigation of the crime of money-laundering, in accordance with the precepts laid down in the domestic legislation of each State Party;

"*(c)* The institution of advisory and supervisory mechanisms for financial institutions for the purpose of verifying compliance with programmes, standards, procedures and internal controls established for such institutions; and

"*(d)* Requiring such institutions to report suspicious or unusual transactions.

"2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

"3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.

"4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

"5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the 40 recommendations of the Financial Action Task Force on Money Laundering, as well as other relevant anti-money-laundering initiatives endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

"6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering."

Third session: 28 April-3 May 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 4 bis of the revised draft convention contained in document A/AC.254/4/Rev.2, which was the same as that contained in document A/AC.254/4/Rev.1.

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[5]Option 2 was based on a proposal submitted by Mexico at the first session of the Ad Hoc Committee (see A/AC.254/L.7). In that proposal, Mexico also suggested including references to some of the recommendations of relevant expert groups, including the Financial Action Task Force on Money Laundering.

Rolling text (A/AC.254/4/Rev.3)

"Article 4 bis
"Measures to combat money-laundering

"Option 1

"1. Each State Party shall institute a domestic regulatory regime for financial institutions doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

"*(a)* The licensing and periodic examination of such institutions;

"*(b)* The lifting of bank secrecy in cases involving measures for the prevention and investigation of the crime of money-laundering, in accordance with the precepts laid down in the domestic legislation of each State Party;

"*(c)* The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

"*(d)* Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

"*(e)* Requiring such institutions to report suspicious or unusual transactions.

"[1 bis. States Parties shall adopt appropriate measures to apply instruments with regard to money-laundering to banking and non-banking financial institutions, and financial markets, including stock exchanges, bureaux de change, etc.][6]

"2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

"3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.

"4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

"5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the forty recommendations of the Financial Action Task Force

[6]Paragraph 1 bis was submitted by India as a reformulation of both options of old paragraph 5 of article 4.

on Money Laundering, as well as other relevant initiatives against money-laundering endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

"6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering."

"Option 2[7]

"1. Each State Party shall:

"*(a)* Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

"*(b)* Without prejudice to articles [14 and 19] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels [within the conditions prescribed by its domestic legislation].[8]

"2. For the purposes of implementing and applying the provisions of this article [4 and 4 bis], States Parties shall adopt and adhere to the international standards set by the Financial Action Task Force on Money Laundering established by the Heads of State or Government of the seven major industrialized countries and the President of the European Commission as set out for reference in annex [...] to this Convention and as endorsed by the General Assembly in its resolution S-20/4 of 10 June 1998 on countering money-laundering.[9]

"[3. With respect to the monitoring of implementation by States Parties of the obligations set forth in this article [4 and 4 bis], and without prejudice to the application of article [23] to other provisions of this Convention, a State Party shall be deemed to be in compliance with article [23] if that State Party is subject to and participates in a regular process of peer review conducted by the Financial Action Task Force or other comparable regional body that assesses implementation of regimes against money-laundering as set forth in this article.]"[10]

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[7]Option 2 was a proposal submitted by the United Kingdom of Great Britain and Northern Ireland at the third session of the Ad Hoc Committee (see A/AC.254/5/Add.6). The proposal was preliminarily discussed at the third session and received widespread support as the basis for further work on this article. Cuba indicated that this option would not be acceptable.

[8]The United Kingdom noted that this phrase might accommodate the concerns of delegations that might have a preference for references to domestic legislation in this subparagraph (as in articles 14 and 19), but would not itself wish to see these included in the final version of the article.

[9]Some delegations expressed concern about the appropriateness of incorporating in a global instrument standards set by a group of States with limited membership. Furthermore, discussion revolved around the inherently optional nature of these recommendations and whether it was compatible with the obligatory language of this paragraph. While it was recognized that the international community should seek to set high standards for measures to combat money-laundering, or at least benefit from already existing standards that had received broad recognition, the matter required further discussion. Some delegations indicated their opposition to the inclusion of the forty recommendations of the Financial Action Task Force on Money Laundering.

[10]Depending upon the outcome of negotiations on article 23, this paragraph might require modification. Some delegations expressed serious concerns about the implications and feasibility of this paragraph. Other delegations indicated that they could not accept the procedure that the paragraph would foresee.

Notes by the Secretariat

2. In the early drafts of the convention (A/AC.254/4 and Rev.1-2) an article on "Transparency of transactions" (article 8) was also included. The text of this article was as follows:

"Article 8
"Transparency of transactions

"1. States Parties shall implement measures to detect and monitor the physical transportation of cash and bearer-negotiable instruments at the border, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements.

"2. In order to improve understanding and information on the detection of financial networks linked to transnational organized crime, States Parties shall take measures to gather financial information and, as much as possible, shall facilitate the exchange of such information, including exchanges between law enforcement agencies and regulatory bodies."

At the third session of the Ad Hoc Committee, article 8 was deleted as it would be superseded by either option 1 or option 2 of article 4 bis.

Fifth session: 4-15 October 1999

Notes by the Secretariat

3. Delegations based their comments on the text of article 4 bis of the revised draft convention contained in document A/AC.254/4/Rev.4, which was the same as that contained in document A/AC.254/4/Rev.3.

Rolling text (A/AC.254.4/Rev.5)

"Article 4 bis
"Measures to combat money-laundering

"Option 1[11]

"1. Each State Party shall institute a domestic regulatory regime for financial institutions doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

"*(a)* The licensing and periodic examination of such institutions;

"*(b)* The lifting of bank secrecy in cases involving measures for the prevention and investigation of the crime of money-laundering, in accordance with the precepts laid down in the domestic legislation of each State Party;

[11]At the fifth session of the Ad Hoc Committee, India, on behalf of the Group of 77 and China, stated that this option was preferable as a basis for further discussion.

"*(c)* The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

"*(d)* Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

"*(e)* Requiring such institutions to report suspicious or unusual transactions.

"[1 bis. States Parties shall adopt appropriate measures to apply instruments with regard to money-laundering to banking and non-banking financial institutions, and financial markets, including stock exchanges, bureaux de change, etc.]

"2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

"3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross border transfers of substantial quantities of cash and appropriate negotiable instruments.

"4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

"5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the forty recommendations of the Financial Action Task Force on Money Laundering, as well as other relevant initiatives against money-laundering endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

"6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

"Option 2

"1. Each State Party shall:

"*(a)* Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies particularly susceptible to

money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

"*(b)* Without prejudice to articles [14 and 19] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels [within the conditions prescribed by its domestic legislation].

"2. For the purposes of implementing and applying the provisions of this article [and article 4 bis], States Parties shall adopt and adhere to the international standards set by the Financial Action Task Force on Money Laundering, as set out for reference in annex [...] to this Convention and as endorsed by the General Assembly in its resolution S-20/4 of 10 June 1998 on countering money-laundering.

"[3. With respect to the monitoring of implementation by States Parties of the obligations set forth in this article [and article 4 bis], and without prejudice to the application of article [23] to other provisions of this Convention, a State Party shall be deemed to be in compliance with article [23] if that State Party is subject to and participates in a regular process of peer review conducted by the Financial Action Task Force on Money Laundering or other comparable regional body that assesses implementation of regimes against money-laundering as set forth in this article.]

"Option 3[12]

"1. Each State Party:

"*(a)* Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

"*(b)* Shall, without prejudice to articles [14 and 19] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic legislation and, to this end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

"2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.[13]

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[12]The text of option 3 was drafted by an informal group convened at the request of the Chairman at the fifth session of the Ad Hoc Committee (A/AC.254/L.83), but was not discussed in detail at that session.

[13]One delegation indicated that it did not support the inclusion of this paragraph in this proposed alternative text.

"3. In establishing a domestic regulatory and supervisory regime in accordance with the terms of this article and without prejudice to any other article of this Convention, States Parties:

"*(a)* [Should consider implementing the forty recommendations of the Financial Action Task Force on Money Laundering, dated ...] [Shall ensure that their implementation and application of this article are consistent with the forty recommendations of the Financial Action Task Force on Money Laundering, dated ... and contained in annex ... to this Convention]; and

"*(b)* [Shall] [May], where appropriate, [implement] [take account of] other relevant initiatives against money-laundering endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.[14]

"4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering."

Seventh session: 17-28 January 2000

Notes by the Secretariat

4. Delegations based their comments on the text of article 4 bis of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

Rolling text (A/AC.254/4/Rev.7)

"Article 4 bis[15]
"Measures to combat money-laundering

"1. Each State Party:

"*(a)* Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;[16]

[14]Care must be taken to include references to all relevant regional organizations against money-laundering that might be in existence at the time that the convention was opened for signature.

[15]The text of this article was revised pursuant to discussion at the informal consultations held during the seventh session of the Ad Hoc Committee. Except where indicated otherwise, this revised text was provisionally approved at the informal consultations and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[16]Subparagraph *(a)* would remain under review, pending the final formulation of paragraph 3 of this article and in order to consider whether it would be appropriate to insert the phrase "in conformity with domestic law".

"*(b)* Shall, without prejudice to articles [14 and 19] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic legislation and, to this end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

"2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. The measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

"3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties shall [endeavour to] ensure that their implementation and application of this article are consistent with the recommendations contained in annex [...] to this Convention and shall, in addition where appropriate, take account of the relevant initiatives of regional and interregional organizations against money-laundering, such as initiatives of the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force on Money Laundering and the Organization of American States.[17]

"4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering."

Notes by the Secretariat

5. Because of lack of time, article 4 bis was not discussed at the eighth session of the Ad Hoc Committee and the relevant discussion was deferred to the ninth session (see A/AC.254/28, para. 10). At the ninth session of the Ad Hoc Committee, both in plenary and in an informal working group established at the request of the Chairman and chaired by South Africa, the proposal of the Islamic Republic of Iran, mentioned in footnote 17 above, received broad support.

6. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 4 bis, as amended. The last amendments are reflected in the final text of the Convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft

[17]The text of this paragraph was drafted by an informal working group set up by the Chairman and coordinated by the representative of South Africa at the informal consultations held during the seventh session of the Ad Hoc Committee. It was intended to serve as a basis for further consideration at the eighth session of the Ad Hoc Committee. The Islamic Republic of Iran, supported by several other delegations, including China, proposed the following alternative text for this paragraph: "In establishing a domestic regulatory and supervisory regime in terms of this article and without prejudice to any other article of this Convention, States Parties may take into consideration the relevant initiatives by regional and interregional organizations against money-laundering, such as initiatives of the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force on Money Laundering and the Organization of American States." Colombia indicated that if the recommendations were to be placed in an annex to the convention, delegations should be given adequate opportunity to examine the annex in detail and agree on its content.

resolution, annex. I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 7
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

C. Interpretative notes

The interpretative notes on article 7 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1), paras. 14-17) are as follows:

Paragraph 1 (a)

(a) The words “other bodies” may be understood to include intermediaries, which in some jurisdictions may include stockbroking firms, other securities dealers, currency exchange bureaux or currency brokers.

(b) The words "suspicious transactions" may be understood to include unusual transactions that, by reason of their amount, characteristics and frequency, are inconsistent with the customer's business activity, exceed the normally accepted parameters of the market or have no clear legal basis and could constitute or be connected with unlawful activities in general.

Paragraph 1 (b)

(c) The establishment of a financial intelligence unit called for by this subparagraph is intended for cases where such a mechanism does not yet exist.

Paragraph 3

(d) During the negotiations, the words "relevant initiatives of regional, interregional and multilateral organizations" were understood to refer in particular to the forty recommendations of the Financial Action Task Force on Money Laundering, as revised in 1996, and, in addition, to other existing initiatives of regional, interregional and multilateral organizations against money-laundering, such as the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union and the Organization of American States.

Article 8. Criminalization of corruption

Notes by the Secretariat

1. This article traces back to General Assembly resolution 54/128 of 17 December 1999, in which the General Assembly directed the Ad Hoc Committee to incorporate into the draft convention measures against corruption linked to organized crime, including provisions regarding the sanctioning of acts of corruption involving public officials.

A. Negotiation texts

Second session: 8-12 March 1999

Rolling text (A/AC.254/4/Rev.1)

"Article 4 ter
"Measures against corruption[1]

"States Parties obligate themselves to take the following measures to effectively combat corruption and bribery [involving an organized criminal group]:

"[An act of corruption in the public sphere committed within the framework of organized crime in order to facilitate such criminal activities shall be considered an aggravating factor.]

"[A State Party that has not yet adopted the legal measures necessary for consideration in its domestic law of an act of corruption as an aggravating factor, as referred to in paragraph [...], shall do so.]

"[List of measures to be inserted]"

Fourth session: 28 June-9 July 1999

Notes by the Secretariat

2. The version of article 4 ter contained in document A/AC.254/Rev.1 remained unchanged in the intermediate drafts of the convention A/AC.254/4/Rev.2 and 3.

3. Two proposals submitted at the fourth session of the Ad Hoc Committee by France (A/AC.254/L.28) and the United States (A/AC.254/L.29) were consolidated, forming a new article 17 bis.

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[1]This article, which was not the subject of discussion at the first session of the Ad Hoc Committee, was a combination of two proposals submitted independently of one another: a proposal submitted by the United States (A/AC.254/L.11) (the title, the first paragraph and the reference in square brackets at the end to the future insertion of measures) and a proposal submitted by Uruguay (the two full paragraphs in square brackets).

4. Amendments to the text of article 4 ter based on the summary of the Chairman of the Ad Hoc Committee of the discussions during the fourth session of the Ad Hoc Committee (A/AC.254/L.40) are reflected in the following revised draft of the convention (A/AC.254/4/Rev.4).

Rolling text (A/AC.254/4/Rev.4)

"Article 4 ter
"Measures against corruption

"1. This Convention shall apply to the offences of corruption [described in this article], when involving an organized criminal group.[2]

"2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally[3] [and involving an organized criminal group]:[4]

"*(a)* The [promise,] offering or giving to a public official,[5] directly or indirectly, of an undue advantage,[6] for the official himself or another person or entity, in exchange for acting or refraining from acting in the exercise of his official duties;

"*(b)* The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in exchange for acting or refraining from acting in the exercise of his official duties.[7]

"[3. Any State Party that has not yet done so shall, in conformity with its international obligations, take measures to make punishable conduct referred to in paragraph 2 of this article involving:

"*(a)* A foreign public official;

"*(b)* An international civil servant;

"*(c)* A judge or official of an international court.][8]

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[2]Some delegations wished to ensure that the obligations in this article were subject to the fundamental principles of their legal systems, as set forth in article 6, paragraph 2, of document A/AC.254/4/Rev.3. A number of delegations suggested that this paragraph should be deleted.

[3]One delegation wished to delete the mental element.

[4]Some delegations felt that a transnational aspect could be included. Others felt that this might restrict the scope of the obligation so as to make it of more limited value in fighting organized crime.

[5]See footnote 16 to paragraph 6 below.

[6]Some delegations felt that this term should be more concrete. India proposed that it should be replaced with the words "any gratification other than legal remuneration". Venezuela proposed that the words "undue advantage" should be replaced with the words "undue advantage or other type of advantage".

[7]Uruguay proposed the reinsertion of the following text from document A/AC.254/4/Rev.3:

"An act of corruption in the public sphere committed within the framework of organized crime in order to facilitate such criminal activities shall be considered an aggravating factor.

"A State Party that has not yet adopted the legal measures necessary for consideration in its domestic law of an act of corruption as an aggravating factor, as referred to in paragraph [...], shall do so."

[8]Some delegations felt that the conduct described in this paragraph should not be included in this article, in particular in view of the possibility of including such offences in a future instrument on corruption. Other delegations felt that this paragraph raised concerns about privileges and immunities accorded by international instruments to some of the officials described in this paragraph. Some delegations, including Belgium, considered this paragraph essential for the fight against corruption, particularly in the context of the fight against transnational organized crime. Some delegations proposed the deletion of this paragraph.

"4. Each State Party shall also take such measures as may be necessary to establish as criminal offences the participation as an accomplice[9] in an offence established in accordance with this article [and conspiracy to commit or criminal association with respect to such offence].[10]

"4 bis. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences other forms of corruption, when committed intentionally [and involving an organized criminal group].[11]

"5. Each State Party shall:

"*(a)* To the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity[12] and to prevent and detect corruption of public officials[13] [; and]

"[*(b)* If it has not already done so, establish and maintain domestic authorities [with sufficient independence and appropriate resources] for the purpose of ensuring effective prevention and detection of corruption among public officials.][14, 15]

"6. For the purposes of this article, a public official is [*insert definition*]."[16]

Sixth session: 6-17 December 1999

Notes by the Secretariat

5. Delegations based their comments on the text of article 4 ter of the revised draft convention contained in document A/AC.254/4/Rev.5, which was the same as that contained in document A/AC.254/4/Rev.4.

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[9]This term is derived from the International Convention for the Suppression of Terrorist Bombings and is intended to ensure that aiding the crime is punished. It would be necessary to harmonize this provision with the corresponding provision in article 4.

[10]Further consideration could be given to including the concept described in the text in square brackets (and the corresponding provision in article 4) in article 3 rather than in this article.

[11]This paragraph would address the concerns of some delegations that the criminalization of other forms of corruption should not be precluded. The potential additional instrument on corruption could also regulate this area more precisely.

[12]This phrase was inserted in order to refer to preventive measures contained in regional anti-corruption instruments.

[13]Some delegations were of the view that an indication of the measures to be taken should be included, along the lines of article 4 bis, on measures against money-laundering. They suggested that for that purpose the proposals of Mexico contained in document A/AC.254/L.39 could be used. The view was expressed that the substance of those proposals would be of value in the formulation of an independent international instrument against corruption.

[14]A number of delegations felt that this paragraph could be inserted in other portions of the convention. More detailed provisions could be included in a future additional instrument addressing corruption.

[15]Several delegations suggested that subparagraph *(b)* should be deleted, since the concept was covered by subparagraph *(a)*. Venezuela proposed that the two subparagraphs should be merged, as follows: "States Parties shall, as appropriate, establish and maintain domestic authorities in order to ensure the effective prevention and detection of corruption among public officials and shall adopt effective legislative, administrative or other measures in order to promote integrity and in order to prevent and detect corruption among public officials." Some delegations noted that, if the words "with sufficient independence and appropriate resources" were deleted, then the word "independent" should be inserted before the words "domestic authorities".

[16]A number of delegations felt that, in any case, the definition should include the list contained in paragraph 4 of document A/AC.254/L.29, that is, "judicial official, juror or lay judge, police official, border control and customs official, investigator, prosecutor or other official with criminal law enforcement responsibilities in the State Party concerned". Other delegations supported the inclusion of other persons acting in an official capacity. India proposed the definition "any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty".

Colombia (A/AC.254/L.100)

"Article 4 ter
"Measures against corruption

"For the purposes of this Convention, States Parties shall undertake to adopt the following measures with a view to effectively combating acts of corruption:[17]

"*(a)* They shall establish as criminal offences acts that in article 2 bis of this Convention are regarded as acts of corruption;

"*(b)* They shall establish transnational bribery as a criminal offence;

"*(c)* They shall establish as criminal offences the participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences provided for in subparagraphs *(a)* and *(b)* of this article;

"*(d)* They shall establish as criminal offences the offering of any benefit, physical or psychological coercion, intimidation or any manoeuvre aimed at causing a person who is able to assist in the investigation of any of the offences provided for in this Convention to refrain from doing so, to alter his testimony, to conceal, fail to hand over, destroy or tamper with evidence or to in any way obstruct the activities of the competent authorities;

"*(e)* They shall establish rules of conduct for the correct, ethical and proper performance of public duties;

"*(f)* They shall establish systems for the declaration of income, assets and liabilities by persons performing public duties and for the publication of such declarations where appropriate;

"*(g)* They shall establish systems for the appointment of public officials and for the procurement of goods and services by the State that will ensure the transparency, public notification, fairness and efficiency of such systems;

"*(h)* They shall adopt measures to promote and actively uphold the integrity and independence of the judiciary;

"*(i)* They shall provide the competent authorities with the necessary mechanisms to ensure the effective investigation of cases involving corruption;

"*(j)* They shall establish reliable systems for the collection and monitoring of State revenues and their proper investment, in order to prevent their diversion to private interests;

"*(k)* They shall establish systems for the monitoring of corporate accounts with a view to preventing the keeping of off-the-books records, the conducting of off-the-books or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of the item concerned, and the use of forged documents;

"*(l)* They shall establish bodies with responsibility for examining suspicious transactions and determining whether they involve property derived from acts of corruption;

"*(m)* They shall regulate professional secrecy and bank secrecy so that they do not hamper the conducting of criminal investigations into acts of corruption;

[17]The list of measures was not exhaustive; on the contrary, it set out some of the measures that the Ad Hoc Committee could examine with a view to their inclusion in this article, without prejudice to the inclusion of other measures.

"*(n)* They shall establish independent auditing bodies with the authority and means to supervise public spending;

"*(o)* They shall establish bodies specializing in combating corruption;

"*(p)* They shall introduce measures to monitor contributions of private funds to political campaigns and to allow for the inspection of the related accounts by any member of the public;

"*(q)* They shall prohibit the deductibility for tax purposes of sums paid for the performance of acts of corruption by any private or public enterprise or individual of a State to any public official or elected representative of another State;

"*(r)* They shall ensure that the media and the general public may freely receive and communicate information on questions of corruption;

"*(s)* They shall establish systems to ensure the effective monitoring of State funds and activities by civil society;

"*(t)* They shall establish measures aimed at removing unnecessary formalities in order to ensure that administrative operations are conducted expeditiously and with transparency;

"*(u)* They shall establish public education programmes to make the public aware of the cost which acts of corruption represent in terms of the lawfulness and efficiency of the State."

Japan (A/AC.254/L.111)

Japan proposed the following text for paragraph 6 of article 4 ter:

"6. 'Public official' shall be understood by reference to the definition of 'public official' in the domestic law of the State in which the person in question performs that function and as applied in its criminal law and shall include, but not be limited to, any judicial official, juror or lay judge, police official, border control or customs official, investigator, prosecutor or other official with law enforcement responsibilities in the State concerned."

Mexico (A/AC.254/L.119)

"Article 4 ter
"Offences of corruption

"1. This Convention shall apply to the offences of corruption described in this article, when involving an organized criminal group.

"2. Each State Party shall adopt, in conformity with its constitutional principles, such legislative and other measures as may be necessary to establish as criminal offences the following acts of corruption, when committed intentionally and involving an organized criminal group:

"*(a)* The solicitation or acceptance, directly or indirectly, by a public official or a person who provides a public service, of any article of monetary value or other benefits such as gifts, favours, promises or advantages for himself or another person

or entity, in exchange for acting or refraining from acting in the performance of his public duties or in the provision of a public service;

"*(b)* The promise, offering or giving, directly or indirectly, to a public official or a person who provides a public service, of any article of monetary value or other benefits such as gifts, favours, promises or advantages for that public official or for another person or entity, in exchange for acting or refraining from acting in the performance of his public duties or in the provision of a public service;

"*(c)* The acting or refraining from acting, by a public official or a person who provides a public service, in the performance of his duties, for the purpose of unlawfully obtaining benefits for himself or for a third party;

"*(d)* The promise, offering or giving, directly or indirectly, by its nationals, persons having their habitual residence in its territory or businesses domiciled there, of any article of monetary value or other benefits such as gifts, favours, promises or advantages, in exchange for the acting or refraining from acting by a public official of another State or a person who provides a public service in another State, in the performance of that official's public duties or provision of a public service, in connection with an economic or commercial transaction;

"*(e)* The increase in the assets of a public official or a person who provides a public service when that person is unable to prove the legitimacy of that increase or the lawful origin of the property in his or her name or in respect of which he or she acts as owner;

"*(f)* The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

"*(g)* The participation as an accomplice in any of the offences established pursuant to this article.

"3. Moreover, States Parties shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences other forms of corruption when committed intentionally and involving an organized criminal group.

"4. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative and such persons, if held liable, shall be subject to effective, proportionate and dissuasive sanctions, including monetary sanctions.

Report of the Chairman on the informal consultations (A/AC.254/L.120)

"Introduction

"1. Pursuant to its decision at its fifth session, held in Vienna from 4 to 15 October 1999, the Ad Hoc Committee devoted part of the informal consultations at its sixth session to the consideration of articles 4 ter, 20, 22 and 22 bis of the revised draft United Nations Convention against Transnational Organized Crime.

"2. Regarding article 4 ter, the participants at the informal consultations had before them proposals made by Colombia (A/AC.254/L.100), Japan (A/AC.254/L.111) and the Russian Federation (A/AC.254/L.115).[18] Mexico also submitted a proposal

[18]This proposal focused on rewording the title of article 4 ter as follows: "Criminalization of corruption".

contained in a document distributed in English, French and Spanish. At the request of the Chairman, the work of the informal consultations was based on the text of the draft convention contained in document A/AC.254/4/Rev.5.

"3. The Chairman of the informal consultations hereby submits the recommendations made at the informal consultations to the Ad Hoc Committee for its consideration and action.

"Recommendations

"Article 4 ter: Measures against corruption

"Title

"4. The title of article 4 ter should read 'Criminalization of corruption'.

"Paragraph 1

"5. Paragraph 1 should be deleted.

"Paragraph 2

"6. On the chapeau of paragraph 2, the two issues debated were the retention or deletion of the words 'when committed intentionally' and the retention or deletion of the text appearing in square brackets. The question of intention appeared to be a matter of law and not only a textual issue and required further consideration. On the question of involvement of an organized criminal group, some delegations were of the view that article 2 of the draft convention was sufficient in establishing the link with organized crime. Other delegations were of the view that that link was important in article 4 ter to ensure that criminalization of corruption pursuant to the convention would remain within the boundaries of the instrument.

"7. On paragraph 2 *(a)*, with the exception of one delegation, participants were of the view that the word 'promise' should remain in the text without square brackets. A proposal by the Republic of Korea to replace the words 'undue advantage' with the words 'undue pecuniary or other advantage' found favour with the participants at the informal consultations. There were several proposals for alternative text to the words 'in exchange for'. Those proposals were not distant from each other and delegations agreed that the appropriate formulation would be found. In response to doubts raised about the clarity of the words 'in the exercise of his official duties', the proposal of Canada to replace it with the phrase 'in the context of the exercise of his official duties' might be the basis for further work in reaching agreement.

"8. On paragraph 2 *(b)*, there was a proposal to find an alternative term for the words 'solicitation and acceptance', but it was felt that the issue required further consideration to ensure use of the most appropriate term, which would fully reflect the intention of the article.

"Paragraph 3

"9. The majority of delegations were in favour of deleting paragraph 3. Three delegations expressed their wish to retain the paragraph, while two others were of the view that the concept of transnational corruption would enrich the convention and could be retained in text drafted in a non-mandatory fashion.

"Paragraph 4

"10. It was agreed that it would be best to postpone consideration of paragraph 4 until the outcome of the consideration of article 3 of the draft convention was clear.

"Paragraph 4 bis

"11. On paragraph 4 bis, it was felt that the text should be placed in square brackets until the Ad Hoc Committee had reached a decision on the possible separate instrument against corruption, pursuant to action to be taken by the General Assembly on the draft resolution contained in document A/C.3/54/L.6.

"Paragraph 5

"12. It was agreed that placement of paragraph 5 should be decided upon, as it dealt with issues that were not directly related to criminalization. Regarding paragraph 5 *(b)*, the United States undertook to propose a formulation that would meet all concerns.

"Paragraph 6

"13. Discussion on paragraph 6 was based on the proposal submitted by Japan (A/AC.254/L.111). It was felt that agreement might lie in trying to achieve a broad definition, while maintaining a key role for domestic law."

South Africa (A/AC.254/L.121)

South Africa proposed that the following new paragraph should follow paragraph 2 of article 4 ter:

"[...] For the purpose of implementing or applying paragraph 2 of this article, knowledge or intent as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances."

United States of America (A/AC.254/L.125) [See also article 9 of the Convention]

The United States proposed that paragraph 5 of article 4 ter should be deleted and replaced with the following new article:

"Article [...]
"Other measures against corruption

"1. In addition to the measures set forth in article 4 ter of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish corruption of public officials.

"2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of corruption of public officials, including by providing such authorities with sufficient independence to deter inappropriate influence on their actions."

Rolling text (A/AC.254/4/Rev.6)

"Article 4 ter
"Criminalization of corruption

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally [and involving an organized criminal group]:[19]

"*(a)* The promise, offering[20] or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties;

"*(b)* The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.[21]

"[2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant.][22]

"3. Each State Party shall also take such measures as may be necessary to establish as criminal offences the participation as an accomplice in an offence established in accordance with this article [and conspiracy to commit or criminal association with respect to such offence].[23]

"4. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences other forms of corruption, when committed intentionally [and involving an organized criminal group].[24]

"5. For the purposes of paragraphs [...][25] of this article and article 4 quater, a public official shall be a public official or a person who provides a public service[26] as defined in the domestic law and as applied in the criminal law of the State in which[27] the person in question performs that function."[28]

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[19]As indicated above, some delegations felt that a transnational aspect could be included. Others felt that this might restrict the scope of the obligation so as to make it of more limited value in fighting organized crime. At its sixth session, the Ad Hoc Committee agreed that the obligation created in this article was not intended to include the actions of a person who acted under duress or undue influence.

[20]At the sixth session of the Ad Hoc Committee, the Islamic Republic of Iran noted that, while the terms "promise" and "offer" used in connection with the proposed criminalization were not contrary to the fundamental legal principles of the legal system of the Islamic Republic of Iran, they currently presented difficulties.

[21]At the sixth session of the Ad Hoc Committee, one delegation was of the opinion that in both subparagraphs *(a)* and *(b)* the purpose for which a person could offer an undue advantage to a public official should be in order to obtain an undue advantage from the official concerned.

[22]The text of this paragraph was submitted by Belgium at the sixth session of the Ad Hoc Committee as a compromise proposal. The question of whether the paragraph would be retained might depend on the decision of the Ad Hoc Committee on the possible separate international instrument on corruption. Several delegations insisted on the deletion of this paragraph.

[23]At the sixth session of the Ad Hoc Committee, it was decided to postpone discussion of this paragraph until the finalization of article 3 of the convention.

[24]At its sixth session, the Ad Hoc Committee deferred discussion of this paragraph until such time as it had reached a decision on the possible separate instrument on corruption.

[25]Paragraph(s) pertaining to the criminalization of certain conduct involving domestic public officials.

[26]The concept of a person who provides a public service applies to particular legal systems and insertion of this concept in the definition is intended to facilitate cooperation between parties with that concept in their legal system.

[27]One delegation expressed a preference for the words "for which" instead of the words "in which".

[28]At the sixth session of the Ad Hoc Committee, Colombia proposed the following formulation for this article in order to take into account concerns expressed about the clarity of the text: "For the purpose of paragraph [...] of this article, a public official shall be a person who provides a public service or performs a public function as defined in the domestic law of the State in which the person in question provides that service or performs that function."

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Rev.7)

"Article 4 ter[29]
"Criminalization of corruption

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally [and involving an organized criminal group]:[30]

"*(a)* The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties;

"*(b)* The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.[31]

"[2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant.]

"3. Each State Party shall also take such measures as may be necessary to establish as criminal offences the participation as an accomplice in an offence established in accordance with this article.

"4. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences other forms of corruption, when committed intentionally [and involving an organized criminal group].[32]

"5. For the purposes of paragraphs [...] of this article and article 4 quater, a public official shall be a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State in which the person in question performs that function."

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[29]The text of this article was revised pursuant to discussion at the informal consultations held during the seventh session of the Ad Hoc Committee. Except where indicated otherwise, this revised text was provisionally approved at the informal consultations and recommended by the Chairmen of the informal consultations as the basis for consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[30]At the informal consultations held during the seventh session of the Ad Hoc Committee, many delegations were in favour of deleting the phrase in square brackets. Other delegations supported its retention. The matter would remain under review, pending the consideration of article 2 of the convention.

[31]As indicated above, at the sixth session of the Ad Hoc Committee, one delegation was of the opinion that, in subparagraphs *(a)* and *(b)*, the purpose for which a person could offer an undue advantage to a public official should be in order to obtain an undue advantage from the official concerned. At the informal consultations held during the seventh session of the Ad Hoc Committee, China reiterated its support for this position. The Chairman requested China to submit a concrete proposal at the eighth session of the Ad Hoc Committee that would reflect its concerns while meeting the concerns of all other delegations.

[32]As indicated above, at the sixth session of the Ad Hoc Committee, the discussion of this paragraph was deferred until such time as a decision had been reached on the drafting of a separate legal instrument against corruption. At the informal consultations held during the seventh session of the Ad Hoc Committee, it was agreed to consider the text of this paragraph in connection with paragraph 2.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Rev.8)

"Article 4 ter
"Criminalization of corruption

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:[33]

"*(a)* The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties;

"*(b)* The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.

"2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

"3. Each State Party shall also take such measures as may be necessary to establish as criminal offences the participation as an accomplice in an offence established in accordance with this article.

"[Old paragraph 4 was deleted]

"4. For the purposes of paragraph 1 of this article and article 4 quater, 'public official' shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State in which the person in question performs that function."

Notes by the Secretariat

6. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 4 ter, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex. I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

[33]At its eighth session, the Ad Hoc Committee provisionally approved article 4 ter and decided that the question of whether to include at the end of this paragraph the words "and involving an organized criminal group" would remain under review, pending the consideration of article 2 of the convention (see also A/AC.254/28, para. 12).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 8
Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

C. Interpretative notes

The interpretative notes on article 8 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh session (see A/55/383/Add.1, paras. 18 and 19) are as follows:

Paragraph 1

(a) The obligation under this article was not intended to include the actions of a person who acted under such a degree of duress or undue influence as to constitute a complete defence to the crime.

Paragraph 4

(b) The concept of a person who provides a public service applies to particular legal systems and the incorporation of the concept into the definition is intended to facilitate cooperation between States parties with that concept in their legal systems.

Article 9. Measures against corruption

Notes by the Secretariat

1. This article traces back to General Assembly resolution 54/128 of 17 December 1999, in which the General Assembly directed the Ad Hoc Committee to incorporate into the draft convention measures against corruption linked to organized crime, including provisions regarding the sanctioning of acts of corruption involving public officials.

A. Negotiation texts

Sixth session: 6-17 December 1999

Mexico (A/AC.254/L.119)

"Article [...]
"Measures to combat corruption

"For the purposes specified in article 4 ter of this Convention, States Parties agree to consider the applicability, within their own domestic systems, of measures to establish, maintain and strengthen:

"*(a)* A comprehensive internal regulatory and oversight regime for public office and service aimed at preventing conflicts of interest and ensuring the preservation and proper use of resources assigned to public officials and to persons who provide public services, as well as a proper understanding of their responsibilities and the rules governing their activities;

"*(b)* Mechanisms to enforce such a regime and rules of conduct;

"*(c)* Systems for the protection of public officials and persons who provide public services and also private individuals who in good faith report acts of corruption involving an organized criminal group, including protection of their identity, in conformity with the fundamental principles of their domestic law;

"*(d)* National authorities to ensure the effective prevention and detection of the corruption of public officials;

"*(e)* Systems for the declaration of income, assets and liabilities by persons who perform public duties or provide public services in such posts as are laid down by law and for the publication of such declarations where appropriate;

"*(f)* Measures to prevent the corruption, by organized criminal groups, of public officials and persons who provide public services, such as feasible measures to detect and monitor the transborder movement of cash, subject to safeguards to ensure

proper use of information, and to establish sufficient internal accounting controls to enable their personnel to detect acts of corruption;

"*(g)* The study of further preventive measures that take account of the relationship between equitable remuneration and probity in public service.

United States of America (A/AC.254/L.125) [See also article 8 of the Convention]

The United States proposed that paragraph 5 of article 4 ter should be deleted and replaced with the following new article:

"Article [...]
"Other measures against corruption

"1. In addition to the measures set forth in article 4 ter of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish corruption of public officials.

"2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of corruption of public officials, including by providing such authorities with sufficient independence to deter inappropriate influence on their actions."

Rolling text (A/AC.254/4/Rev.6)

"Article 4 quater
"Measures against corruption

"1. In addition to the measures set forth in article 4 ter of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and sanction corruption of public officials.

"2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and sanctioning of corruption of public officials, including by providing such authorities with adequate independence to deter inappropriate influence on their actions."

Notes by the Secretariat

2. At its eighth session, the Ad Hoc Committee approved article 4 quater without amendment (see A/AC.254/28, para. 11). At its tenth session, the Ad Hoc Committee considered, finalized and approved article 4 quater (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 9
Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10. Liability of legal persons

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 7
"Liability of legal [corporate] persons

"1. Each State Party shall take the measures needed to ensure that legal [corporate] persons may be held liable where they profit from a criminal activity or participation in the working of a criminal organization.

"2. Subject to the fundamental legal principles of the State Party, the liability of the legal [corporate] person may be criminal, civil or administrative.

"3. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences or of their accomplices.

"4. Each State Party shall, in particular, ensure that legal [corporate] persons may be punished in an effective, proportionate and deterrent manner, and that substantial economic penalties may be imposed on them.

Rolling text (A/AC.254/4)

"Article 5
"Corporate [criminal] liability

"Option 1

"Each State Party shall, as necessary, establish in its domestic legislation the possibility that legal persons may be held liable if they [knowingly commit or otherwise participate in], [or derive profits from], an offence established in article(s) [...] [*alternatively*: an offence covered by this Convention].[1] Subject to the fundamental

[1]The scope of this convention is still subject to deliberation. For this reason, throughout the present text the alternatives "an offence established in article(s) [...]" (which in the current draft would be articles 3 and 4, on participation in a criminal organization, and money-laundering) and "an offence covered by this Convention" (which would have a broader scope, as established by article 2) are provided, as appropriate.

legal principles of the State Party, such liability of the legal person may be criminal, civil, administrative or commercial. Such liability shall be without prejudice to the criminal liability of the natural persons who were the perpetrators of the offences or of their accomplices. Each State shall ensure, in particular, that legal persons may be penalized in an effective, proportionate and dissuasive manner and that material and economic sanctions may be imposed on them.[2]

"Option 2

"Each contracting State shall consider including in its domestic legislation the possibility of holding private bodies or public corporate bodies of private benefit liable for profiting from organized crime or for operating as cover for a criminal organization."

Rolling text (A/AC.254/4/Rev.1)

"Article 5
"Corporate liability[3]

"1. Each State Party shall [, as appropriate,] take the measures needed to ensure that legal [corporate] persons may be held liable where they [knowingly] [or through failure of supervision] profit from a criminal activity or participate in the working of a criminal organization.[4]

"2. Subject to the fundamental legal principles of the State Party, the liability of the legal [corporate] persons may be criminal, civil or administrative.

"3. Such liability shall be incurred without prejudice to the criminal [or civil] liability of the natural persons who have committed the offences or of their accomplices.

"4. Each State Party shall, in particular, ensure that legal [corporate] persons may be punished in an effective, proportionate and deterrent manner and that substantial economic penalties may be imposed on them.

"[5. Each State Party shall, where necessary and for the purposes of this Convention, establish in its domestic legislation an appropriate penalty for employees or managers of financial institutions or of institutions entrusted with supervisory functions in cases where such persons fail to comply with any or all of the supervisory arrangements laid down.][5]

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[2]This paragraph combined options 1 and 3 in the earlier text contained in document CICP/CONV/WP.1 and was not discussed at the informal preparatory meeting.

[3]This article was redrafted on the basis of a proposal submitted by France (see A/AC.254/5).

[4]Several delegations suggested that such liability should be incurred only if intent or (serious) negligence could be shown. Other delegations noted that there was a need to define such terms as "profit" and "participation in". One delegation observed that liability should be incurred also when the corporate body had served as a cover for criminal activity, even when it had not profited from such activity. Another delegation questioned whether liability should be incurred if only a few officers in the corporate body had participated in the criminal activity.

[5]This paragraph was submitted by Colombia (see A/AC.254/L.5).

Fourth session: 28 June-9 July 1999

Notes by the Secretariat

1. The version of article 5 contained in A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2 and 3).

Rolling text (A/AC.254/4/Rev.4)

"Article 5[6]
"Liability of legal persons[7]

"1. Each State Party shall take such measures as may be necessary, consistent with its legal principles,[8] to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in articles 3 and 4 of this Convention.[9]

"2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

"3. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences.

"4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions."

Seventh session: 17-28 January 2000

Notes by the Secretariat

2. The version of article 5 contained in document A/AC.254/4/Rev.4 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.5 and 6).

Rolling text (A/AC.254/4/Rev.7)

"Article 5
"Liability of legal persons

"1. Each State Party shall take such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in

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[6]The formulation of this article, subject to the footnotes to paragraph 1, received broad support at the fourth session of the Ad Hoc Committee.

[7]New Zealand supported the reference to "legal" rather than to "corporate" persons (see A/AC.254/L.41).

[8]Consistency in the wording of clauses referring to legal principles throughout the convention would need to be addressed at a later stage.

[9]The formulation in this paragraph should be consistent with the scope described in article 2, paragraph 1

serious crimes involving an organized criminal group and for the offences established under articles 3, 4, 4 ter and 17 bis of this Convention.

"2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

"3. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences.

"4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions."

Notes by the Secretariat

3. At its seventh session, the Ad Hoc Committee approved article 5 of the draft Convention without amendment (see A/AC.254/25, para. 13), clarifying that the formulation of paragraph 1 should be consistent with the scope of application of the convention, as defined in its article 3, paragraph 1. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 5, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 10
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11. Prosecution, adjudication and sanctions

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 8
"Prosecution, sentencing and adequate sanctions

"1. Each State Party shall make the offences mentioned under this Convention punishable by sanctions commensurate with their seriousness, such as imprisonment, other forms of deprivation of liberty, fines and confiscation.

"2. States Parties shall endeavour to ensure that any discretionary legal powers conferred under their domestic law and connected with the prosecution of persons for offences mentioned under this Convention are exercised so as to maximize the effectiveness of the detection and enforcement measures applying to those offences, due account being taken of the need to deter the commission of such offences.

"3. States Parties shall ensure that their courts or other competent authorities bear in mind [take into account] the serious nature of the offences mentioned under this Convention when considering the early discharge or release on parole of persons convicted of such offences.

"4. Each State Party shall where appropriate set a long statute of limitations period under its domestic law in which to initiate proceedings concerning any of the offences mentioned under this Convention, that period being longer where the alleged offender has escaped being brought to justice [trial].

"5. Each State Party shall ensure that the acts mentioned under articles 3 and 4 of this Convention and committed in its territory shall be indictable regardless of where in the territories of Member States the criminal organization is based or exercises its criminal activities.

"6. Where instances of participation in a criminal organization fall under the jurisdiction of several Member States, those States shall consult in coordinating their action for initiating effective criminal proceedings.

"7. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that any person charged with or convicted of an offence mentioned under this Convention and present in its territory attends the relevant criminal proceedings."

Rolling text (A/AC.254/4)

"Article 6
"Effective prosecution, adjudication and sanctions

"1. Each State Party shall make the commission of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention] liable to sanctions that take into account the grave nature of those offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.[1]

"2. States Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences that are the subject of this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

"3. States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences that are the subject of this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

"4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence that is the subject of this Convention, and a longer period where the alleged offender has evaded the administration of justice.

"5. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence that is the subject of this Convention, who is found within its territory, is present at the necessary criminal proceedings."

Rolling text (A/AC.254/4/Rev.1)

"Article 6
"Effective prosecution, adjudication and sanctions[2]

"1. Each State Party shall make the commission of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention] liable to sanctions that take into account the grave nature of those offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.[3]

"2. States Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences that

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[1]With respect to the sanctions referred to here, at the informal preparatory meeting held in Buenos Aires in 1998 it was noted that, according to article 1, paragraph 4, of the draft convention, States might adopt stricter or more severe measures than those foreseen in the convention. Another suggestion was to include a provision that would encourage States to consider the commission of an offence by a criminal organization an aggravating circumstance for the purpose of sanctioning.

[2]This article was reformulated at the first session of the Ad Hoc Committee on the basis of a proposal submitted by France (see A/AC.254/5, above). One delegation emphasized the need for provisions on procedural safeguards.

[3]See footnote 1 above. At the first session of the Ad Hoc Committee, one delegation proposed the deletion of the phrase "such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation".

are the subject of this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

"3. States Parties shall ensure that[4] their courts or other competent authorities bear in mind the serious nature of the offences that are the subject of this Convention when considering the [eventuality] [possibility] of early release[5] or parole of persons convicted of such offences.[6]

"4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence that is the subject of this Convention and a longer period where the alleged offender has evaded the administration of justice.[7]

"[5. Each State Party shall ensure that the acts mentioned under articles 3 and 4 of this Convention and committed in its territory shall be indictable regardless of where in the territories of Member States the criminal organization is based or exercises its criminal activities.][8]

"[6. Where instances of participation in a criminal organization fall under the jurisdiction of several Member States, those States shall consult in coordinating their action for initiating effective criminal proceedings.][9]

"7. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person who is charged with or convicted of an offence that is the subject of this Convention and who is found within its territory is present at the necessary criminal proceedings."[10]

Second session: 8-12 March 1999

Rolling text (A/AC.254/4/Rev.2)

"Article 6
"Effective implementation of the Convention

"1. Each State Party shall take effective measures to promote and monitor within its territory the implementation of the object and aims of the Convention.

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[4]One delegation proposed that "ensure that" should be amended to read "authorize".

[5]One delegation noted that "early release" was used in the penal systems of only some countries. Several delegations noted that early release and parole depended on several criteria, including the conduct of the prisoner. It was suggested that one way of addressing that problem might be to replace the word "eventuality" with the word "possibility".

[6]Several delegations questioned whether this paragraph could be understood as infringing on the independence of the courts and allowing the possibility of politically motivated interference in the administration of justice.

[7]One delegation suggested that this paragraph should not be compulsory. Another delegation noted the importance of identifying which offences would fall under the scope of application of the convention.

[8]The Ad Hoc Committee noted that the transfer of this and the following paragraph to article 9, on jurisdiction, was still to be considered.

[9]It was noted that a similar provision was contained in article 9, paragraph 5.

[10]Some delegations questioned why a person already convicted of an offence should be present at the "necessary criminal proceedings". Some delegations suggested that, to the extent that paragraph 7 referred to the taking of a person into custody pending extradition, it should be moved to the appropriate article (article 10). One delegation noted the need to ensure the rights of the defendant in the implementation of the paragraph. One delegation proposed the deletion of the paragraph.

"2. In carrying out its obligations under the Convention, each State Party shall take the necessary measures, including legislative and administrative measures, in conformity with the fundamental principles of its domestic legal system.

"3. Each State Party may adopt more strict or severe measures than those provided for by the Convention for the prevention and control of transnational organized crime.

"4. Each State Party shall take effective measures to ensure that its territory, or any facility therein, is not allowed to be used by an organized criminal group, or a member thereof, to plan or perpetrate any crime covered by this Convention in any other country.[11]

"5. Each State Party shall make the commission of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention] liable to sanctions that take into account the grave nature of those offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

"6. States Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences that are the subject of this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

"7. States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences that are the subject of this Convention when considering the [eventuality] [possibility] of early release or parole of persons convicted of such offences.

"8. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence that is the subject of this Convention and a longer period where the alleged offender has evaded the administration of justice.

"[9. Each State Party shall ensure that the acts mentioned under articles 3 and 4 of this Convention and committed in its territory shall be indictable regardless of where in the territories of Member States the criminal organization is based or exercises its criminal activities.]

"[10. Where instances of participation in a criminal organization fall under the jurisdiction of several Member States, those States shall consult in coordinating their action for initiating effective criminal proceedings.]

"11. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person who is charged with or convicted of an offence that is the subject of this Convention and who is found within its territory is present at the necessary criminal proceedings."

[11]Paragraphs 1 to 3 of the present article contain text moved from article 1 by the Ad Hoc Committee at its second session. Paragraph 4 was proposed by India.

Fourth session: 28 June-9 July 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 6 of the revised draft convention contained in document A/AC.254/4/Rev.3, which was the same as that contained in document A/AC.254/4/Rev.2.

Revision based on the summary of the Chairman (A/AC.254/L.37)

"Article 6
"Prosecution, adjudication and sanctions[12, 13]

"1. Each State Party shall make the commission of an offence covered by this Convention liable to sanctions that take into account the grave nature of those offences.

"2. Each State Party shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences that are covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

"[3. Each State Party shall ensure that its courts or other competent authorities bear in mind the serious nature of the offences that are covered by this Convention when considering the [eventuality] [possibility] of early release or parole of persons convicted of such offences.][14]

"4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.[15]

"[5. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person who is charged with or convicted of an offence that

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[12]Paragraphs 1 to 3 of the text of article 6 in document A/AC.254/4/Rev.3 had been combined as follows and were to be moved to a new article 23 ter:

"1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic legal system, to ensure the implementation of its obligations under this Convention.

"2. Each State Party may adopt more strict or severe measures than those provided for by the Convention for the Prevention and Control of Transnational Organized Crime."

[13]Many delegations expressed concerns about the following text, which was article 6, paragraph 4, in document A/AC.254/4/Rev.3:

"Each State Party shall take effective measures to ensure that its territory, or any facility therein, is not allowed to be used by an organized criminal group, or a member thereof, to plan or perpetrate any crime covered by this Convention in any other country."

The Chairman suggested that the text should be either clarified and redrafted or deleted.

[14]Several delegations expressed concern about this paragraph because, under their legal systems, early release on parole might depend on factors other than the seriousness of the offence. Other delegations noted that their legal systems did not foresee the possibility of early release. It was suggested that this paragraph might have to be redrafted in less obligatory terms.

[15]This paragraph was based on article 3, paragraph 8, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, Treaty Series, vol. 1582, No. 27627). Some delegations proposed its deletion. Several other delegations supported its retention. In addition, one delegation proposed the deletion of the words "where appropriate" on the grounds that the draft convention would apply only to serious crime and that the words would unnecessarily weaken the obligation. Another delegation proposed that the paragraph should end with the words "this Convention", with the subsequent text deleted.

is covered by this Convention and who is found within its territory is present at the necessary criminal proceedings.]"[16]

Rolling text (A/AC.254/4/Rev.4)

"Article 6
"Prosecution, adjudication and sanctions[17]

"1. Each State Party shall make the commission of an offence covered by this Convention[18] liable to sanctions that take into account the grave nature of those offences.

"2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences that are covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

"[3. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences that are covered by this Convention when considering the [eventuality] [possibility] of early release or parole of persons convicted of such offences.]

"4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

"[5. In the case of offences established in accordance with articles [...] of this Convention, each State Party shall take appropriate measures, [consistent with its legal system,] with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.][19]"

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[16]This paragraph was derived from article 3, paragraph 9, of the 1988 Convention. A number of delegations were of the view that this paragraph should be moved to article 10, on extradition. Other delegations, however, pointed out that, in view of the seriousness of the offences covered by the draft convention, the purpose of this paragraph would be to ensure the presence of the defendant also for domestic proceedings.

[17]See also footnote 13, above. India supported the retention of article 6, paragraph 4, contained in document A/AC.254/4/Rev.3 and proposed the following formulation:

> "Each State Party shall adopt legislative and other measures, as may be necessary, to establish as criminal offences the conduct constituting the perpetration of any crime covered by this Convention from its own territory in the territory of any other State by an organized criminal group or a member thereof."

This formulation was supported by some delegations. Other delegations wished to discuss further the proposal and its placement in the draft convention.

[18]The use of the phrase "an offence covered by this Convention" should be reviewed once the scope of the convention has been determined.

[19]This paragraph is a revision of paragraph 11 of article 6 (see A/AC.254/4/Rev.3) proposed by Finland at the request of the Chairman. It was not discussed at the fourth session of the Ad Hoc Committee.

Seventh session: 17-28 January 2000

Notes by the Secretariat

2. The version of article 6 contained in document A/AC.254/4/Rev.4 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.5 and 6).

Rolling text (A/AC.254/4/Rev.7)

"Article 6
"Prosecution, adjudication and sanctions

"1. Each State Party shall make the commission of an offence established under this Convention liable to sanctions that take into account the gravity of that offence.

"2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences that are covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

"3. In the case of offences established in accordance with articles 3, 4, 4 ter and 17 bis of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

"4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences that are covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

"5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice."

Notes by the Secretariat

3. At its seventh session, the Ad Hoc Committee approved article 6 of the draft convention, as amended. In connection with paragraph 4 of article 6, on early release or parole, the Ad Hoc Committee decided upon the inclusion of a note to the effect that paragraph 4 would not oblige States parties to provide for the early release or parole of imprisoned persons if the legal systems of the States parties in question did not provide for early release or parole. It was the understanding of the Ad Hoc Committee that paragraph 4 would not apply to those legal systems that did not foresee the possibility of early release or parole (see A/AC.254/25, para. 18). At its tenth session, the Ad Hoc Committee considered, finalized and approved article 6, as amended. It was decided that former paragraph 3 of article 4 should be moved, after being amended, to article 6 as an additional sixth paragraph. The

text of this paragraph, as reformulated after the appropriate amendments in order to be applicable to all offences established under the convention, reads as follows:

> "6. Nothing contained in this Convention shall affect the principle that the description of the offences established under this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

(See also article 6, footnote 39, of the convention.)

The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 11
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

C. Interpretative note

The interpretative note on article 11 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 20) is as follows:

Paragraph 4

Paragraph 4 would not oblige States parties to provide for early release or parole of imprisoned persons if their legal systems did not provide for early release or parole.

Article 12. Confiscation and seizure

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 6
"Identification, freezing, seizure and confiscation

"1. Each State Party shall adopt the measures needed to identify, freeze or seize any instrumentality or proceeds of the offences mentioned under this Convention, with a view to their eventual confiscation.

"2. Each State Party shall adopt the measures required to confiscate:

"*(a)* The proceeds of serious offences, or assets of a value equivalent to that of such proceeds;

"*(b)* Property, equipment and other assets used or intended to be used for committing serious offences.

"3. Each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. States Parties shall not refrain from acting under the provisions of this paragraph on the ground of bank secrecy.

Rolling text (A/AC.254/4)

"Article 7
"Confiscation

"Option 1

"1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

"*(a)* Proceeds derived from an offence established in article(s) [...] [*alternatively*: from an offence covered by this Convention] or property the value of which corresponds to that of such proceeds;

"*(b)* Property, equipment or other instrumentalities used in or intended for use in an offence established in article(s) [...] [*alternatively*: in an offence covered by this Convention].

"Option 2

"1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

"*(a)* Proceeds derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

"*(b)* Property, equipment or other instrumentalities used in or intended for use in offences covered by this Convention.

"2. States Parties shall adopt such measures as may be necessary to enable the identification, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

"3. For the purposes of paragraphs 1 and 2 of this article, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

"4. *(a)* Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) [...] [*alternatively*: over an offence covered by this Convention], the State Party in whose territory proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

"(i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

"(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, insofar as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party;

"*(b)* Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) [...] [*alternatively*: over an offence covered by this Convention], the requested Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph *(a)* of this paragraph, by the requested Party;

"*(c)* The decisions or actions provided for in subparagraphs *(a)* and *(b)* of this paragraph shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party;

"*(d)* The provisions of article [...] (on mutual assistance) are applicable mutatis mutandis. In addition to the information specified in article [...], paragraph [...], requests made pursuant to this article shall contain the following:[1]

[1]At the informal preparatory meeting held in Buenos Aires in 1998, it was suggested that subparagraph *(d)* could be transferred to the article on mutual legal assistance.

"(i) In the case of a request pertaining to subparagraph *(a)* (i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested Party to seek the order under its domestic law;

"(ii) In the case of a request pertaining to subparagraph *(a)* (ii), a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

"(iii) In the case of a request pertaining to subparagraph *(b)*, a statement of the facts relied upon by the requesting State Party and a description of the actions requested;

"*(e)* Each State Party shall furnish the Secretary-General with the text of any of its laws and regulations that give effect to this paragraph and the text of any subsequent changes to such laws and regulations;[2]

"*(f)* If a State Party elects to make the taking of the measures referred to in subparagraphs *(a)* and *(b)* of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis;

"*(g)* States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

"5. *(a)* Proceeds of crime or property confiscated by a State Party pursuant to paragraph 1 or paragraph 4 of this article shall [, without prejudice to the rights of bona fide third parties,] be returned to its bona fide lawful owner where such owner can be identified. In other respects, said proceeds or property shall be disposed of by that Party according to its domestic law and administrative procedures;[3]

"*(b)* When acting on the request of another State Party in accordance with this article, a Party may give special consideration to concluding agreements on:

"(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against organized crime;

"(ii) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

"6. *(a)* If proceeds of crime have been transferred[4] or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds;

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[2]At the informal preparatory meeting it was suggested that subparagraph *(e)* could be transferred to the article on the role of the United Nations and other organizations.

[3]At the informal preparatory meeting it was suggested that there should be no confiscation by the State of any property to which a bona fide third party had a legitimate claim.

[4]The term "transferred" was erroneously used in this document instead of the correct one "transformed". The latter was included in the subsequent drafts of the convention.

"*(b)* If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds;

"*(c)* Income or other benefits derived from:

"(i) Proceeds of crime;

"(ii) Property into which proceeds of crime have been transformed or converted; or

"(iii) Property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

"7. Each State Party may consider ensuring that the onus of proof is reversed regarding the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

"8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

"9. Cooperation under this article may be refused by a State Party if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

Third session: 28 April-3 May 1999

Notes by the Secretariat

1. The version of article 7 contained in document A/AC.254/4 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.1 and 2).

Rolling text (A/AC.254/4/Rev.3)

"Article 7
"Confiscation

"1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

"*(a)* Proceeds of crime[5] or property the value of which corresponds[6] to that of such proceeds;

[5]The scope of this article was under debate. It was suggested that because of variations in domestic legal systems in this area, it might be difficult for some countries to conform to an overly broad obligation. It was emphasized, however, that there would be a need for flexibility in finalizing this article.

[6]Some delegations indicated that the issue of corresponding value created difficulties (see, for example, the statement of Spain contained in document A/AC.254/5/Add.5).

"*(b)* Property, equipment or other instrumentalities used in or intended for use[7] in offences covered by this Convention.

"2. States Parties shall adopt such measures as may be necessary to enable the identification, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

"3. For the purposes of this article and article 7 bis, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

"4. If proceeds of crime have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

"5. If proceeds of crime have been intermingled with property acquired from legitimate sources,[8] such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

"6. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

"7. Each State Party may consider the possibility of requiring that a convicted offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.[9]

"8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties."

Fifth session: 4-15 October 1999

Notes by the Secretariat

2. Delegations based their comments on the text of article 7 of the revised draft convention contained in document A/AC.254/4/Rev.4, which was the same as that contained in document A/AC.254/4/Rev.3.

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[7]One delegation expressed concern about the inclusion of the words "or intended for use".

[8]One delegation noted the need to safeguard the rights of the family of the offender in considering confiscation of intermingled property.

[9]This paragraph was reformulated at the suggestion of the Chairman in order to take into consideration concerns expressed by many delegations.

Rolling text (A/AC.254/4/Rev.5)

"Article 7
"Confiscation

"1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

"*(a)* Proceeds of crime or property the value of which corresponds[10] to that of such proceeds;

"*(b)* Property, equipment or other instrumentalities used in [or intended for use in][11] offences covered by this Convention.[12]

"2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.[13]

"3. For the purposes of this article and article 7 bis, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.[14]

"4. If proceeds of crime have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

"5. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

"6. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

"7. Each State Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

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[10]At the fifth session of the Ad Hoc Committee, several delegations noted that their legal systems did not provide for the confiscation of the value that corresponded to the proceeds of crime. Several other delegations supported the retention of this possibility, noting that it was also envisaged under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627).

[11]At the fifth session of the Ad Hoc Committee, several delegations expressed concern about the inclusion of the words "or intended for use". Several other delegations supported the retention of those words, which appeared in the 1988 Convention.

[12]At the fifth session of the Ad Hoc Committee, some delegations noted that, once the final formulation of article 4, paragraph 1 bis, had been decided, a parallel provision would be required for the article on confiscation.

[13]Cyprus noted that this article and paragraph should also cover provisional measures even in cases where no confiscation took place.

[14]At the fifth session of the Ad Hoc Committee, Colombia expressed the view that this paragraph, on the seizure of records, was out of place in an article dealing with confiscation.

"8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

"9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party."[15]

Seventh session: 17-28 January 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 7 of the revised draft Convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

Rolling text (A/AC.254/4/Rev.7)

"Article 7[16]
"Confiscation and seizure

"1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

"*(a)* Proceeds of crime or property the value of which corresponds to that of such proceeds;

"*(b)* Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

"2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

"3. If proceeds of crime have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

"4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

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[15]This paragraph, taken from article 5, paragraph 9, of the 1988 Convention, was inserted at the fifth session of the Ad Hoc Committee. Several delegations expressed their concern about the reference to implementation "subject to" the provisions of the domestic law of a State party. The Chairman suggested that this issue be reviewed in connection with similar phrasing in other parts of the draft convention.

[16]The text of this article was provisionally approved at the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session. It was noted that this article posed issues similar to those under consideration in relation to paragraph 1 bis of article 4.

"5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

"6. For the purposes of this article and article 7 bis, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

"7. Each State Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

"8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

"9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party."

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Rev.8)

"Article 7[17, 18]
"Confiscation and seizure

"1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

"*(a)* Proceeds of crime or property the value of which corresponds to that of such proceeds;

"*(b)* Property, equipment or other instrumentalities used in or destined for use[19] in offences covered by this Convention.

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[17]The text of this article was provisionally approved by the Ad Hoc Committee at its eighth session. The United States noted, however, that the current text of the article did not resolve the question of to which crimes the obligation to provide for confiscation and seizure would apply. The problem stemmed from differing legal approaches and was similar to that encountered in relation to the scope of article 4. A similar matter might arise with respect to article 7 bis for those States which would rely on their domestic legislation in implementing its provisions. It was therefore suggested that the matter could be resolved by supplementing article 7 with a provision that would read as follows: "The provisions of subparagraphs *(a)* to *(d)* of paragraph 2 of article 4 shall apply mutatis mutandis in defining the scope of offences for which States Parties shall apply this article and, where appropriate, for the purpose of implementing article 7 bis."

[18]The interpretation of this article should take into account the principle in international law that property belonging to a foreign State and used for non-commercial purposes may not be confiscated except with the consent of the foreign State. Furthermore, it is not the intention of the convention to restrict the rules that apply to diplomatic or State immunity, including that of international organizations.

[19]This expression is meant to signify an intention of such a nature that it may be viewed as tantamount to an attempt to commit a crime.

"2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

"3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

"4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

"5. Income or other benefits[20] derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

"6. For the purposes of this article and article 7 bis, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

"7. Each State Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

"8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

"9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party."

Notes by the Secretariat

4. Delegations based their comments on the text of article 7 of the revised draft convention contained in document A/AC.254/4/Rev.9 and Corr.1, which was the same as that contained in document A/AC.254/4/Rev.8.

5. The Ad Hoc Committee considered, finalized and approved article 7, as amended on the basis of a proposal submitted by the Netherlands (see A/AC.254/L.225). That proposal was to amend paragraph 1 to read as follows:

"1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

"..."

[20]This term is intended to encompass material benefits, as well as legal rights and interests of an enforceable nature, that are subject to confiscation.

The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

6. Following the adoption of the report of the Ad Hoc Committee on its tenth session, Lebanon requested that the reservations of Lebanon regarding article 7, paragraph 6, should be reflected in that report.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 12
Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

C. Interpretative notes

The interpretative notes on article 12 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 21-23) are as follows:

(a) The interpretation of article 12 should take into account the principle in international law that property belonging to a foreign State and used for non-commercial purposes may not be confiscated except with the consent of the foreign State. It is not the intention of the convention to restrict the rules that apply to diplomatic or State immunity, including that of international organizations.

Paragraph 1 (b)

(b) The words "used in or destined for use in" are meant to signify an intention of such a nature that it may be viewed as tantamount to an attempt to commit a crime.

Paragraph 5

(c) The words "other benefits" are intended to encompass material benefits, as well as legal rights and interests of an enforceable nature, that are subject to confiscation.

Article 13. International cooperation for purposes of confiscation

A. Negotiation texts

Third session: 28 April-3 May 1999

Notes by the Secretariat

1. The text of article 7 bis was previously part of article 7 in the early drafts of the convention (A/AC.254/4 and Revs.1 and 2)

Rolling text (A/AC.254/4/Rev.3)

"Article 7 bis
"International cooperation for purposes of confiscation

"1. Following a request[1] made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) [...] [*alternatively*: over an offence covered by this Convention], the State Party in whose territory proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 are situated shall:

"*(a)* Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

"*(b)* Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, insofar as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 situated in the territory of the requested Party.

"2. Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) [...] [*alternatively*: over an offence covered by this Convention], the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

"3. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party, in accordance with and subject to the

[1]Some delegations indicated that in their countries an official court request was required for purposes of confiscation.

provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

"4. The provisions of article 14 are applicable mutatis mutandis. In addition to the information specified in paragraph 10 of article 14, requests made pursuant to this article shall contain the following:

"*(a)* In the case of a request pertaining to subparagraph 1 *(a)* of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

"*(b)* In the case of a request pertaining to subparagraph 1 *(b)* of this article, a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

"*(c)* In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

"5. Each State Party shall furnish the Secretary-General with the text of any of its laws and regulations that give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

"6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis.

"7. States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

"8. Cooperation under this article may be refused by a State Party if the offence to which the request relates would not be an offence in the context of a criminal organization if committed within its jurisdiction.[2]

"9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties."

Fifth session: 4-15 October 1999

Notes by the Secretariat

2. Delegations based their comments on the text of article 7 bis of the revised draft convention contained in document A/AC.254/4/Rev.4, which was the same as that contained in document A/AC.254/4/Rev.3.

[2]One delegation suggested that this paragraph should be clarified in respect of the phrase "an offence in the context of a criminal organization". Another delegation noted the need for further specification of grounds for refusal.

Rolling text (A/AC.254/4/Rev.5)

"Article 7 bis
"International cooperation for purposes of confiscation[3]

"1. Following a request made pursuant to article 7 by another State Party having jurisdiction over an offence established in article(s) [...] of this Convention [*alternatively*: an offence covered by this Convention], the State Party in whose territory proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 are situated shall:

"*(a)* Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

"*(b)* Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the requesting Party in accordance with paragraph 1 of article 7, in so far as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 situated in the territory of the requested Party.

"2. Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) [...] of this Convention [*alternatively*: an offence covered by this Convention], the requested State Party shall take measures to identify, trace[4] and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

"3. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

"4. The provisions of article 14 are applicable mutatis mutandis. In addition to the information specified in paragraph 10 of article 14, requests made pursuant to this article shall contain the following:

"*(a)* In the case of a request pertaining to subparagraph 1 *(a)* of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

"*(b)* In the case of a request pertaining to subparagraph 1 *(b)* of this article, a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

"*(c)* In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

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[3]At the fifth session of the Ad Hoc Committee, Cyprus proposed that the title should be amended to read "International cooperation for the purposes of provisional measures and confiscation".

[4]At the fifth session of the Ad Hoc Committee, Cyprus proposed the deletion of the words "identify, trace and".

"5. Each State Party shall furnish the Secretary-General of the United Nations with the text of any of its laws and regulations that give effect to this article and the text of any subsequent changes to such laws and regulations.

"6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis.

"7. States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

"8. Cooperation under this article may be refused by a State Party if the offence to which the request relates would not be an offence [covered by this Convention].[5]

"9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties."

Seventh session: 17-28 January 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 7 bis of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

Rolling text (A/AC.254/4/Rev.7)

"Article 7 bis[6]
"International cooperation for purposes of confiscation

"1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7, situated in its territory, shall:

"*(a)* Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

"*(b)* Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the requesting Party in accordance with paragraph 1 of article 7, insofar as it relates to proceeds of crime,

[5]The text of this paragraph as it appeared in document A/AC.254/4/Rev.4 referred to "an offence in the context of a criminal organization if committed within its jurisdiction". At the fifth session of the Ad Hoc Committee, the text was amended on the basis of a proposal by France, as indicated in square brackets.

[6]The text of this article was provisionally approved at the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

property, instrumentalities or any other things referred to in paragraph 1 of article 7 situated in the territory of the requested Party.

"2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

"3. The provisions of article 14 are applicable mutatis mutandis. In addition to the information specified in paragraph 10 of article 14, requests made pursuant to this article shall contain the following:

"*(a)* In the case of a request pertaining to paragraph 1 *(a)* of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

"*(b)* In the case of a request pertaining to paragraph 1 *(b)* of this article, a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;[7]

"*(c)* In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

"4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

"5. Each State Party shall furnish the Secretary-General of the United Nations with the text of any of its laws and regulations that give effect to this article and the text of any subsequent changes to such laws and regulations.

"6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis.

"7. States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

"8. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

"9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties."

[7]The Ad Hoc Committee might wish to review this paragraph in the light of the final formulation of article 14.

Notes by the Secretariat

4. At its eighth session, the Ad Hoc Committee approved article 7 bis of the draft convention without amendment (see A/AC.254/28, para. 11). At its tenth session, the Ad Hoc Committee considered, finalized and approved article 7 bis, as amended in paragraph 1 on the basis of a proposal submitted by the Netherlands (A/AC.254/L.225). That proposal was to amend paragraph 1 to read was as follows:

> "1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in paragraph 1 of article 7 situated in its territory shall, to the greatest extent possible within its domestic legal system:
>
> "*(a)* ...
>
> "*(b)* ..."

The amendment is reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 13
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 *(a)* of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 *(b)* of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

C. Interpretative note

The interpretative note on article 13 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 24) is as follows:

References in this article to article 12, paragraph 1, should be understood to include references to article 12, paragraphs 3 to 5.

Article 14. Disposal of confiscated proceeds of crime or property

A. Negotiation texts

Third session: 28 April-3 May 1999

Notes by the Secretariat

1. The text of article 7 ter was previously part of article 7 in the early drafts of the convention (A/AC.254/4/Revs.1 and 2).

Rolling text (A/AC.254/4/Rev.3)

"Article 7 ter
"Disposal of confiscated assets

"1. Proceeds of crime or property confiscated by a State Party pursuant to paragraph 1 of article 7 or paragraph 1 of article 7 bis shall be disposed of by that State Party according to its domestic law and administrative procedures.

"2. When acting on the request of another State Party in accordance with this article, a State Party may give special consideration to concluding agreements on:

"*(a)* Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property or a substantial part thereof to intergovernmental bodies specializing in the fight against organized crime;

"*(b)* Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose."

Fifth session: 4-15 October 1999

Notes by the Secretariat

2. Delegations based their comments on the text of article 7 ter of the revised draft convention contained in document A/AC.254/4/Rev.4, which was the same as that contained in document A/AC.254/4/Rev.3.

Rolling text (A/AC.254/4/Rev.5)

"Article 7 ter
"Disposal of confiscated assets

"1. Proceeds of crime or property confiscated by a State Party pursuant to paragraph 1 of article 7 or paragraph 1 of article 7 bis shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

"[1 bis. When acting on the request made by another State Party in accordance with article 7 bis of this Convention, States Parties shall, if so requested, give priority consideration to returning the confiscated assets to the requesting State Party so that it can give compensation to the victims of the crime or return such assets to their legitimate owners, in accordance with its domestic law.][1]

"2. When acting on the request of another State Party in accordance with articles 7 and 7 bis, a State Party may give special consideration to concluding agreements on:

"*(a)* Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property or a substantial part thereof to intergovernmental bodies specializing in the fight against organized crime;

"*(b)* Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose."

Seventh session: 17-28 January 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 7 ter of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

[1]Paragraph 1 bis was proposed by China at the fifth session of the Ad Hoc Committee (A/AC.254/L.79) and received wide support. Japan proposed the addition of the phrase "to the extent permitted by domestic law" at the end of the paragraph. Some delegations proposed inserting the text of this paragraph as subparagraph 2 *(c)*. The Netherlands suggested that the purpose of returning the assets should be more general and not necessarily limited to those included in the proposal. China undertook to consider the various comments made on the proposal with a view to reformulating it. Cuba suggested that this paragraph should be drafted in a non-mandatory fashion to accommodate countries whose legislation did not permit the use of confiscated assets for the compensation of victims.

Rolling text (A/AC.254/4/Rev.7)

"Article 7 ter[2]
"Disposal of confiscated assets

"1. Proceeds of crime or property confiscated by a State Party pursuant to article 7 or paragraph 1 of article 7 bis shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

"1 bis. When acting on the request made by another State Party in accordance with article 7 bis of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated assets to the requesting State Party so that it can give compensation to the victims of the crime or return such assets to their legitimate owners.[3]

"2. When acting on the request of another State Party in accordance with articles 7 and 7 bis, a State Party may give special consideration to concluding agreements on:

"*(a)* Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property or a substantial part thereof to intergovernmental bodies specializing in the fight against organized crime;

"*(b)* Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose."

Notes by the Secretariat

4. At its eighth session, the Ad Hoc Committee approved article 7 ter of the draft convention without amendment (see A/AC.254/28, para. 11). Paragraph 1 bis was approved as paragraph 2 of the article, with consequent renumbering of the following paragraph. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 7 ter, with the following amendments: the phrase "proceeds of crime or property", was proposed by the Russian Federation to replace the word "assets" in paragraph 2. The addition of the phrase "to the account designated in accordance with article 21 bis, paragraph *(c)* of this Convention" was proposed by Pakistan and approved, as amended by Canada. The deletion of the word "substantial" in subparagraph 3 *(a)* was proposed by New Zealand and approved. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

[2]Except where indicated otherwise, the text of this article was provisionally approved at the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[3]This paragraph was under review, as it would require further refinement in order to meet all the concerns expressed at the informal consultations held during the seventh session of the Ad Hoc Committee. Consideration should also be given to the relation of this paragraph with articles 14, 18 and 18 bis. The Russian Federation made a proposal on confiscation (A/AC.254/5/Add.20), which was to be considered by the Ad Hoc Committee at its eighth session.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 14
Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 *(c)*, of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

C. Interpretative note

The interpretative note on article 14 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 25) is as follows:

When feasible, States parties would examine whether it would be appropriate, in conformity with individual guarantees embodied in their domestic law, to use confiscated assets to cover the costs of assistance provided pursuant to article 24, paragraph 2.

Article 15. Jurisdiction

A. Negotiation texts

First session: 19-29 January 1999

France (A/AC.254/5)

"Article 5
"Jurisdiction

"1. Each State Party shall take the necessary measures to establish its jurisdiction over the offences mentioned under articles 3 and 4 where such offence is committed in its territory or on board a vessel or aircraft registered in its territory.

"2. A State Party may also establish its jurisdiction over any such offence in the following cases:

"*(a)* Where the alleged offender is a national of that State;

"*(b)* Where the offence is committed to the detriment of [against] that State or one of its nations.

"3. This Convention does not preclude the exercise of any or all criminal jurisdiction established by a State Party in conformity with its domestic law.

"4. The provisions of this article shall not affect obligations relating to the establishment of jurisdiction over offences in accordance with any other multilateral treaty.

"5. Where more than one State Party can claim jurisdiction over an offence mentioned under this Convention, the States Parties concerned shall take pains to coordinate their action efficaciously, especially as regards the conditions of prosecution and arrangements for mutual legal assistance.

"6. A State Party shall notify the Secretary-General of the establishment of jurisdiction pursuant to paragraph 2."

Rolling text (A/AC.254/4)

"Article 9
"Jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in article(s) [...] when the offence is

committed in the territory of that State or on board a vessel or aircraft registered in the State.

"2. A State Party may also establish its jurisdiction over any such offence when:

"*(a)* The alleged offender is a national [or a habitual resident] of that State;

"*(b)* The offence was committed against [that State or] a national of that State [; or]

"[*(c)* The offence has substantial effects in that State].

"[2 bis. Paragraph 2 may also apply to other offences mentioned in this Convention.]

"3. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

"4. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other multilateral treaty.

"5. In a case where more than one State claims jurisdiction over an offence covered by the present Convention, the States concerned undertake to coordinate their actions in an effective manner, in particular regarding the conditions of exercising prosecution and the modalities of recourse to mutual assistance.

"[6. A State Party shall inform the Secretary-General of the establishment of jurisdiction under paragraph 2.]"

Rolling text (A/AC.254/4/Rev.1)

"Article 9[1]
"Jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in article(s) [...] when the offence is committed in the territory of that State or on board a vessel or aircraft registered in the State.[2]

"2. A State Party may also establish its jurisdiction over any such offence when:

"*(a)* The alleged offender is a national [or a habitual resident] of that State;

"*(b)* The offence was committed against [that State or] a national of that State [; or][3]

"[*(c)* The offence has substantial effects in that State].[4]

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[1]Several delegations noted that the convention should include an article on the settlement of disputes over jurisdiction.

[2]Some delegations suggested that the wording of this article should be compared with the wording of article 4 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627).

[3]Some delegations expressed a reservation about this subparagraph. One delegation noted that the scope of application of the subparagraph would presumably include money-laundering, an offence not directed at a national of any State.

[4]Several delegations stated that this subparagraph was ambiguous and should be deleted.

"[2 bis. Paragraph 2 may also apply to other offences mentioned in this Convention.][5]

"[3. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.][6]

"4. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other [bilateral or] multilateral treaty.

"5. In a case where more than one State claims jurisdiction over an offence covered by the present Convention, the States concerned [shall seek] to coordinate their actions in an effective manner, in particular regarding the conditions of exercising prosecution and the modalities of recourse to mutual assistance.[7]

"[6. A State Party shall inform the Secretary-General of the establishment of jurisdiction under paragraph 2 of this article.]"[8]

Fourth session: 28 June-9 July 1999

Notes by the Secretariat

1. The version of article 9 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2 and 3).

China (A/AC.254/L.38)

"Article 9
"Jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over each of the offences established in accordance with [this Convention] [article ... of this Convention] when:

"*(a)* The offence is committed in its territory;

"*(b)* The offence is committed on board a vessel flying its flag or an aircraft registered under its laws at the time the offence is committed.

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[5]Several delegations proposed the deletion of this paragraph. Some delegations noted that retaining paragraph 3 would make this paragraph redundant.

[6]Some delegations proposed the deletion of this paragraph on the grounds that it could allow the assertion of extra-territorial jurisdiction. Other delegations pointed out that the paragraph was based on language contained in the 1988 Convention (article 4, paragraph 3).

[7]Several delegations suggested that this paragraph required clarification. One delegation proposed that the words "coordinate their actions" should be amended to read "cooperate". Other delegations were of the view that the language of this paragraph was too obligatory and should be modified.

[8]One delegation noted that this paragraph should be clarified in respect of which State party had the notification obligation, and under what circumstances.

"2. Each State Party may take such measures as may be necessary to establish its jurisdiction over each of the offences established in accordance with [this Convention] [article ... of this Convention] when:

"*(a)* The offence is committed by one of its nationals or by a person who has his or her habitual residence in its territory;

"*(b)* The offence is committed against its nation or nationals;

"*(c)* The offence is one of those established in accordance with article 3, paragraph 1 *(a)*, or article 4, paragraph 1 *(d)*, and is committed outside its territory with a view to committing, in its territory, an offence established in accordance with [this Convention] [article ... of this Convention].

"3. Each State Party:

"*(a)* Shall also take such measures as may be necessary to establish its jurisdiction over each of the offences that it has established in accordance with [this Convention] [article ... of this Convention] when the alleged offender is present on its territory and it does not extradite him or her to another State Party on the ground:

"(i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft registered under its laws at the time the offence was committed; or

"(ii) That the offence has been committed by one of its nationals;

"*(b)* May also take such measures as may be necessary to establish its jurisdiction over each of the offences that it has established in accordance with [this Convention] [article ... of this Convention] when the alleged offender is present in its territory and it does not extradite him or her to another State Party.

"4. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law."

Rolling text (A/AC.254/4/Rev.4)

"Article 9[9]
"Jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in article(s) [...][10] of this Convention when:

"*(a)* The offence is committed in the territory of that State; or

"*(b)* The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed.

[9]The text of this article was based on a proposal submitted by Poland at the fourth session of the Ad Hoc Committee (see A/AC.254/5/Add.7).

[10]Reference would be made here to all the articles of the convention containing an obligation to criminalize certain conduct.

"2. A State Party may also establish its jurisdiction over any such offence when:

"*(a)* The offence is committed against a national or a habitual resident of that State;[11]

"*(b)* The offence is committed by a national or a habitual resident of that State; or

"*(c)* The offence is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with articles [...] of this Convention; or

"[*(d)* The offence has substantial effects in that State.][12]

"[3. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with articles [...] of this Convention when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground:

"*(a)* That the offence has been committed in its territory or on board a vessel that was flying its flag or an aircraft that was registered under its law at the time the offence was committed; or

"*(b)* That the offence has been committed by one of its nationals.][13]

"[4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with articles [...] when the alleged offender is present in its territory and it does not extradite him or her.][14]

"5. If the State exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, the competent authorities of those States shall, as appropriate, consult one another with a view to resolving the matter and coordinating their actions. [Until a solution has been reached, each State Party shall take care, as far as possible, not to jeopardize the investigations conducted by one or more States.][15]

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[11]China proposed the inclusion of the words "or that State" at the end of the sentence. Other delegations suggested that the concept of an "offence committed against a State" was ambiguous and would in any case be covered by paragraph 6 of the present article.

[12]This subparagraph was included in the previous versions of this article and was retained at the request of some delegations.

[13]The text of this paragraph would need to be reviewed in the light of agreement on the formulation of article 10, on extradition.

[14]Ibid.

[15]It was agreed to review this sentence in the light of article 14, on mutual legal assistance, to be agreed upon. The Islamic Republic of Iran proposed that a compromise solution might be the following: "with a view to coordinating their investigative actions, so as not to lose time-sensitive evidence". Some delegations expressed their preference for the previous formulation of this paragraph, as contained in document A/AC.254/4/Revs.1-3.

"6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.[16]

"7. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other international treaty."

Eighth session: 21 February-3 March 2000

Notes by the Secretariat

2. The version of article 9 contained in document A/AC.254/4/Rev.4 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.5-7).

Recommendation of the informal working group on article 9, paragraph 2 (c) submitted at the request of the Chairman (A/AC.254/L.184 and A/AC.254/5/Add.23)

"Article 9
"Jurisdiction

"Paragraph 2

"*(c)* The offence is:

"(i) One of those established in article 3, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

"[(ii) One of those established in article 4, paragraph 1 *(d)*, of this Convention and is committed outside its territory with a view to the commission of an offence established in article 4, paragraph 1 *(a)*, *(b)* or *(c)*, of this Convention within its territory.]"

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[16]In the extensive discussion on this paragraph at the fourth session of the Ad Hoc Committee, several delegations noted that this paragraph could be understood to allow States parties to apply their domestic laws to the territory of other States, for example, to carry out investigative measures abroad. Mexico, supported by several delegations, therefore proposed that the paragraph should be clarified by adding the following sentence: "This Convention does not allow extraterritorial application of domestic legislation." Mexico also referred to the text of article 2, paragraph 4, of the present draft, which would prohibit States parties from undertaking in the territory of another State the exercise of jurisdiction and the performance of functions reserved exclusively for the authorities of that other State by its domestic law. Several other delegations pointed out that the paragraph was identical to article 4, paragraph 3, of the 1988 Convention. Its purpose was understood by those delegations to allow States parties to establish jurisdiction, on which basis they could, for example, then proceed to request mutual legal assistance under article 14, which was in accordance with international law and practice. Those delegations suggested that the proposal of Mexico could itself be misunderstood as prohibiting, in contradiction to the provision in paragraph 2 of the present draft, States parties from applying domestic law to offences committed abroad by, for example, their own nationals. It was also pointed out that article 2, paragraph 3, of the present draft emphasized the principles of sovereign equality, territorial integrity and non-intervention in the domestic affairs of other States and that those principles applied also to any exercise of jurisdiction. The Netherlands pointed out that the issue was explicitly addressed in the comments on article 4, paragraph 3, of the 1988 Convention contained in the Commentary on that convention (United Nations publication, Sales No. E.98.XI.5). Three proposals were made to address the concerns of the first group of countries. Norway proposed amending the end of paragraph 6 to read "in accordance with its domestic law and with international law". Finland proposed amending paragraph 6 to read: "6. This Convention does not exclude the establishment of any criminal jurisdiction by a State Party in accordance with its domestic law." Venezuela proposed that a cross-reference should be inserted in paragraph 6 of article 9 to paragraphs 3 and 4 of article 2 of the present draft. The Chairman noted that at the fourth session of the Ad Hoc Committee none of the proposals had sufficiently broad support to serve as the basis for consensus and that the issue should be kept under review.

United States of America (A/AC.254/L.192 and A/AC.254/5/Add.23)

"Article 9
"Jurisdiction

"Paragraph 1

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in articles 3, 4, 4 ter and 17 bis of this Convention when:

"*(a)* The offence is committed within the territory of that State; or

"*(b)* The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed, where, under the domestic laws of that State, such vessel or aircraft would be considered also to be within its territorial jurisdiction."

Rolling text (A/AC.254/4/Rev.8)

"Article 9[17]
"Jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in articles 3, 4, 4 ter and 17 bis of this Convention when:[18]

"*(a)* The offence is committed in the territory of that State; or

"*(b)* The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed.[19]

"2. Subject to paragraphs 3 and 4 of article 2 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

"*(a)* The offence is committed against a national of that State;[20]

"*(b)* The offence is committed by a national or a habitual resident[21] of that State; or

[17]The text of this article was revised at the informal consultations held during the eighth session of the Ad Hoc Committee and was recommended by the Chairmen of those informal consultations to the Ad Hoc Committee for consideration at its ninth session.

[18]At the informal consultations held during the eighth session of the Ad Hoc Committee, the Islamic Republic of Iran and Pakistan suggested the inclusion of the words "subject to the fundamental principles of their legal system".

[19]At the informal consultations held during the eighth session of the Ad Hoc Committee, the United States expressed a preference for a more flexible formulation of this paragraph in view of the broad scope of the draft convention (see A/AC.254/L.192, as above).

[20]Following extensive discussion at the informal consultations held during the eighth session of the Ad Hoc Committee, it was agreed to delete the reference to habitual residents from this subparagraph on the understanding that States should take into consideration the need to extend possible protection that might stem from the establishment of jurisdiction to stateless persons who might be habitual or permanent residents in their countries.

[21]At the informal consultations held during the eighth session of the Ad Hoc Committee, several delegations suggested that reference to habitual residents should be deleted.

"*(c)* The offence is one of those established in article 3 of this Convention and is committed outside its territory with a view to the commission, within its territory, of an offence covered by this Convention.[22]

"3. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 3, 4, 4 ter and 17 bis of this Convention and serious crimes involving an organized criminal group when the alleged offender is present in its territory and it does not extradite him or her to any of the States Parties solely on the ground:

"*(a)* That the offence has been committed by one of its nationals;

"[*(b)* That a type of punishment that does not exist in the territory of the requested Party may be imposed on that person in the territory of the requesting Party; or]

"[*(c)* That the offence has been committed in its territory or on board a vessel that was flying its flag or an aircraft that was registered under its law at the time the offence was committed.][23, 24]

"4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 3, 4, 4 ter and 17 bis of this Convention and serious crimes involving an organized criminal group when the alleged offender is present in its territory and it does not extradite him or her.[25]

"5. If the State exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, the competent authorities of those States shall, as appropriate, consult one another with a view to coordinating their actions.

"6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.[26]

[*Paragraph 7 was deleted.*]"[27]

[22]At the informal consultations held during the eighth session of the Ad Hoc Committee, it was broadly agreed that this subparagraph required redrafting to reflect more precisely the concept on which it was based. A drafting group of interested delegations held consultations that resulted in a revised draft of the subparagraph, which was contained in document A/AC.254/L.184 and would be before the Ad Hoc Committee at its ninth session in document A/AC.254/5/Add.23. Owing to lack of time, this revised text was not discussed at the informal consultations held during the eighth session of the Ad Hoc Committee (see the new text of paragraph 2, subparagraph *(c)*, in document A/AC.254/4/Rev.9 and Corr.1 below).

[23]At the informal consultations held during the eighth session of the Ad Hoc Committee, several delegations questioned the utility of this subparagraph, as well as whether it would duplicate the provision of paragraph 1 of this article.

[24]At the informal consultations held during the eighth session of the Ad Hoc Committee, using as a basis for their work footnote 53 of document A/AC.254/4/Rev.7 (see footnote 28 concerning article 16 of the convention below), many delegations registered their preference for option 1 contained in that footnote, which corresponded to present subparagraph *(a)* of paragraph 3 and which would limit the application of the principle *aut dedere aut judicare* to the refusal of extradition due to the nationality of the offender. Some delegations indicated their preference for option 2 of footnote 53, which corresponded to present subparagraph *(b)* of paragraph 3.

[25]The text of paragraphs 3 and 4 was inserted at the informal consultations held during the eighth session of the Ad Hoc Committee and remained under review.

[26]At the informal consultations held during the eighth session of the Ad Hoc Committee, it was agreed that an example of how useful coordination between States parties would be was the need to ensure that time-sensitive evidence was not lost (see the interpretative notes below).

[27]At the informal consultations held during the eighth session of the Ad Hoc Committee, it was agreed to delete paragraph 7 on the understanding that the matter addressed by that paragraph would be covered by article 24 of the convention.

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 9
"Jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 3, 4, 4 ter and 17 bis of this Convention when:

"*(a)* The offence is committed in the territory of that State; or

"*(b)* The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time that the offence is committed.[28]

"2. Subject to article 2, paragraphs 3 and 4, of this Convention, a State Party may also establish its jurisdiction over any such offence when:

"*(a)* The offence is committed against a national of that State;

"*(b)* The offence is committed by a national of that State; or

"*(c)* The offence is:

"(i) One of those established in article 3, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

"(ii) One of those established in article 4, paragraph 1 *(d)*, of this Convention and is committed outside its territory with a view to the commission of an offence established in article 4, paragraph 1 *(a)*, *(b)* or *(c)*, of this Convention within its territory.

"3. For the purposes of article 10, paragraph 11 *(a)*, of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person [solely][29] on the ground that he or she is one of its nationals [or that a type of punishment that does not exist in the territory of the requested Party may be imposed on that person in the territory of the requesting Party].[30, 31]

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[28]At the ninth session of the Ad Hoc Committee, the United Kingdom of Great Britain and Northern Ireland and the United States supported the proposal on this paragraph set forth in documents A/AC.254/L.192 and A/AC.254/5/Add.23 (see above). However, a majority of delegations supported the current text. The United Kingdom and the United States agreed to consider further how they might address their concerns in the light of the debate.

[29]This proposal was submitted by Denmark. Its retention depended on the resolution of the question of the text in brackets at the end of the paragraph. Denmark also stated that it needed to study this paragraph further to ensure its compatibility with basic principles of its system.

[30]The text in square brackets appeared previously as paragraph 3 *(b)* (see A/AC.254/4/Rev.8). At the ninth session of the Ad Hoc Committee, its retention was supported by Japan and several other delegations. Some delegations were of the view that there was merit in the substance of the text in square brackets and that some way should be found to include that substance in this article, perhaps in a less mandatory formulation. Many delegations voiced opposition to that proposal.

[31]Ecuador reserved its position on this paragraph until it had had the opportunity to study it in detail.

"4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

"5. If the State exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, the competent authorities of those States shall, as appropriate, consult one another with a view to coordinating their actions.

"6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

[Paragraph 7 was deleted.]"

Notes by the Secretariat

3. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 9, as last amended. The inclusion in subparagraph 2 *(b)* of the phrase "or (by) a stateless person who has his or her habitual residence in its territory" was proposed by Belgium and approved. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 15
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party;

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 6, paragraph 1 *(b)* (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 *(a)* (i) or (ii) or *(b)* (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

C. Interpretative notes

The interpretative notes of article 15 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 26 and 27) are as follows:

Paragraph 2 (a)

(a) States parties should take into consideration the need to extend possible protection that might stem from the establishment of jurisdiction to stateless persons who might be habitual or permanent residents in their countries.

Paragraph 5

(b) An example of how useful coordination between States parties would be was the need to ensure that time-sensitive evidence was not lost.

Article 16. Extradition

A. Negotiation texts

First session: 19-29 January 1999

France and Sweden (A/AC.254/5)

"Extradition

"1. This article shall apply to the offences established by the States Parties in accordance with article [...], paragraph [...].

"2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

"3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

"4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

"5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

"6. In considering requests pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

"7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

"8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

"9. The State Party in the territory of which the offender or the alleged offender is found, if, solely on the basis of the nationality of the person sought, it does not extradite that person, shall be obliged, upon request of the State Party seeking extradition, in cases where article(s) [...] applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

"10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

"11. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article(s) [...] shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

"12. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

"13. States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

"14. With respect to the offences as defined in article(s) [...] of this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of this Convention."

Rolling text (A/AC.254/4)

"Article 10
"Extradition

"1. This article shall apply to the offences established by the States Parties in accordance with article(s) [...] [*alternatively*: to an offence covered by this Convention].

"2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States

Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

"Option 1

"3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may[1] [, at its option,] consider this Convention the legal basis for extradition in respect of any offence to which this article applies. [Extradition shall be subject to the other conditions provided for by the law of the requested State.] The Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.[2]

"Option 2

"3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it shall consider the present Convention the legal basis for extradition in respect of any offence to which this article applies. [Extradition shall be subject to the other conditions provided for by the law of the requested State.] The Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

"4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between them [, subject to the conditions provided for by the law of the requested State].[3]

"Option 1

"5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

"Option 2

"5. With respect to the offences as [defined] [covered] in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of this Convention.

"[6. The offences established in article(s) [...] [*alternatively*: the offences covered by this Convention] shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.]

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[1]It was suggested that, as demonstrated in the implementation of similarly formulated provisions in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627), the use of the word "may" provided States with extensive discretion, which entailed the risk of rendering such a provision ineffective.

[2]It was suggested that the word "shall" as used in this option would give preferential status to this convention in extradition. Such a course of action would require much more detailed provisions on extradition.

[3]It was suggested that the substance of this paragraph could be integrated with a more general article on the relationship of this convention to other bilateral or multilateral treaties.

"Option 1

"7. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his [or her] race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

"Opion 2

"7. Extradition shall not be granted if the requested State Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his [or her] race, religion, [gender], nationality or political opinion, or that a person's position may be prejudiced for any of these reasons.

"Option 1

"8. Cooperation under this article or under article(s) [...] may be refused by a State Party if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

"Option 2

"8. Extradition shall not take place if:

"*(a)* In respect of the person whose extradition is requested, criminal proceedings have been instituted or a judgement rendered by the judicial authorities of the requested State Party;

"*(b)* By the date of receipt of the extradition request the statute of limitations in respect of the criminal case has elapsed under the legislation of one of the States;

"*(c)* The act giving rise to the extradition request is deemed a political offence;

"*(d)* The person whose extradition is requested is under the age of 18 years;

"*(e)* The person whose extradition is requested is at risk of being subjected to persecution or discrimination on the grounds of race, religion, sex, nationality, language or political convictions;

"*(f)* As at the date of receipt of the extradition request, the person whose extradition is requested is a citizen of the requested State;

"*(g)* The act giving rise to the extradition request was committed entirely or in part in the territory of the requested State.

"[9. For purposes of extradition between the States Parties, none of the offences established in article(s) [...] [*alternatively*: none of the offences covered by this Convention] shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.]

"10. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

"11. Subject to the provisions of its domestic law and its extradition treaties, the requested States Parties may, upon being satisfied that the circumstances so war-

rant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his [or her] presence at extradition proceedings. [Such State shall immediately make a preliminary inquiry, in accordance with its own laws.]

"12. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a State Party in whose territory an alleged offender is found shall:

"*(a)* If it does not extradite him [or her] in respect of an offence established in accordance with article(s) [...] [*alternatively*: in respect of an offence covered by this Convention], on the grounds set forth in article [...], paragraph [...], subparagraph [...], submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting State Party;

"*(b)* If it does not extradite him [or her] in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article [...], paragraph [...], subparagraph [...], submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting State Party for the purposes of preserving its legitimate jurisdiction.

"13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party, or the remainder thereof.

"14. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

"15. States Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

"Article 11
"Obligation to extradite or prosecute (aut dedere aut judicare)

"Option 1

"Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established by this Convention, where the alleged offender is present in its territory and, solely on the basis of the nationality of the person sought, it does not extradite that person or conditionally extradite that person for trial pursuant to article(s) [...] to any of the States Parties that have established their jurisdiction in accordance with this article.

"Option 2

"1. The State Party in the territory of which the offender or the alleged offender is found, if [, solely on the basis of the nationality of the person sought,] it does not extradite that person or [temporarily] transfer] [conditionally extradite] that per-

son for trial pursuant to article(s) [...], shall be obliged, upon request of the State Party seeking extradition or transfer, in cases where article(s) [...] applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

"2. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State Party in the territory of which that person is present.

"Article 12
"Extradition of nationals

"Option 1

"1. Each State Party shall consider necessary legislative measures, including extradition of its nationals, if the extradition is requested in respect of any offence established in article(s) [...] [*alternatively*: any offence covered by this Convention].

"2. Extradition of a national may be granted on the condition that the sentence pronounced abroad will be executed in the request[ed] State Party.

"Option 2

"If a State Party denies extradition to another State Party for an offence established in article(s) [...] [*alternatively*: for an offence covered by this Convention] because the person sought is a national of the requested Party, the requested Party shall, upon request of the requesting Party, transfer the person to the requesting Party for trial or other proceedings and the person transferred shall be returned to the requested Party to serve any sentence imposed in the requesting Party as a result of the trial or proceedings for which transfer was made.

"Option 3

"If a State Party does not extradite its nationals, such Party shall undertake to make a periodic review of its domestic legislation in order to determine whether extradition or conditional extradition of nationals might be permitted.

"Article 13
"Consideration of requests for extradition

"Option 1

"1. States Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. The Secretary-General shall be notified of the authority or authorities designated for this purpose.

Transmission of requests for extradition and any communication thereto shall be effected between the authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.

"Option 2

"1. With a view to facilitating cooperation within the framework of the Convention, States Parties shall establish central authorities, which shall communicate directly between themselves. The central authorities shall be responsible for handling incoming and outgoing requests for extradition and mutual legal assistance.

"2. [Notwithstanding paragraph 1,] States Parties, subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries and extraditing persons based only on warrants of arrests or judgements.

"3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

"*(a)* To communicate with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to establish such communication or, if that person is a stateless person, the State in the territory of which that person habitually resides;

"*(b)* To be visited by a representative of that State.

"4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State Party in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended."

Rolling text (A/AC.254/4/Rev.1)

"Article 10
"Extradition[4]

"1. This article shall apply to the offences covered by this Convention [offences established in article(s) ...].[5]

"2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States

[4]This article brings together articles 10 to 13 contained in document A/AC.254/4 and is based on a proposal submitted by France and Sweden (see A/AC.254/5) and resubmitted in an amended form during the first session of the Ad Hoc Committee. The text in brackets in this article was proposed during the discussion at the first session of the Ad Hoc Committee. One delegation noted that this article did not sufficiently take into account the principle of *aut dedere aut judicare*, in particular in respect of the establishment of jurisdiction. One delegation emphasized the importance of ensuring procedural safeguards and suggested that either a separate paragraph should deal with that issue or all relevant paragraphs should refer to "fundamental legal principles".

[5]One delegation proposed that the scope of this article should be limited to offences punishable by one year or more of imprisonment.

Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.[6]

"3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it [shall][7] [may] consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

"4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

"5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

"6. In considering requests pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his or her gender, race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.[8]

"7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.[9] [States Parties, subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries.][10]

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[6]One delegation noted the need for a paragraph on the application of the principle of double criminality to extradition cases.

[7]One delegation stated that this provision could be mandatory only if the convention contained provisions outlining a detailed extradition regime.

[8]Some delegations noted that the use of such ambiguous terms as "substantial" or "cause prejudice" in this provision could increase the number of refusals to extradite and suggested that the paragraph should be clarified, for example by establishing the criteria for the assessment of such issues. Some delegations expressed their preference for the list of grounds for refusal provided in article 10, paragraph 8, option 2, in document A/AC.254/4. Some delegations suggested that a request for extradition could be refused if the offence in question was punishable by capital punishment in the requesting State. One delegation opposed such a provision and noted that paragraph 5, on the statutory conditions for extradition, would be sufficient. One delegation noted that the fact that an offender was sentenced in absentia should not as such be grounds for refusal if the fundamental legal rights of the defendant had not been violated. That delegation offered to prepare a proposal to that effect. Regarding paragraph 6, the Office of the United Nations High Commissioner for Refugees (UNHCR) recommended in document A/AC.254/L.10 that the wording should be amended to read "Extradition shall not be granted if, from the circumstances of the case, it can be inferred that persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion is involved". UNHCR further requested that a paragraph should be incorporated in the convention that would prohibit extradition for the purposes of the convention in cases of "political offences". UNHCR suggested the following wording: "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence, an offence related thereto, or an ordinary criminal offence prosecuted for political reasons." One delegation noted that it was prepared to allow such an exception, but not in the case of heinous offences.

[9]Some delegations expressed their concern that this paragraph might lead to violations of the fundamental legal rights of the defendant.

[10]The text in square brackets was retained from the original document (A/AC.254/4). The text was omitted in the proposal submitted by France and Sweden contained in document A/AC.254/5.

"8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

"9. *(a)* The State Party in the territory of which the offender or the alleged offender is found shall, in cases where this Convention applies, if it does not extradite that person [for the purpose of prosecution],[11] be obliged, upon request of the State Party seeking extradition, whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, [subject to the condition of double criminality,] through proceedings in accordance with the laws of that State.[12] Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State;[13]

"*(b)* Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in subparagraph *(a)*.

"10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits[14] and in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

"11. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

"12. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.[15]

"13. States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their country of persons sentenced to imprisonment or other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

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[11]One delegation noted that the element of refusal of extradition solely on the basis of the nationality of the alleged offender should be retained.

[12]Several delegations were of the view that the principle of *aut dedere aut judicare* should also be applicable in cases of refusal of extradition because of the existence of the death penalty in the requesting State.

[13]One delegation proposed the deletion of the last sentence of this paragraph.

[14]One delegation noted that this paragraph required clarification as to what procedure should be followed if the law did not regulate the matter.

[15]One delegation suggested that this issue was already covered by paragraphs 3 and 4 and therefore proposed the deletion of this paragraph.

"[14. States Parties shall designate an authority, or when necessary authorities,[16] which shall have the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for extradition and any communication thereto shall be effected between the authorities designated by the Parties.[17] This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.][18]

"[Articles 11, 12 and 13 were merged into new article 10]"

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. The version of article 10 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-4).

Rolling text (A/AC.254/4/Rev.5)

"Article 10
"Extradition[19, 20, 21]

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[16]Several delegations noted that this provision was based on the corresponding provision in the 1988 Convention, but that in the latter the provision concerned mutual assistance. They noted that the use of central authorities instead of diplomatic channels for the purpose of extradition, as well as the designation of several authorities for that purpose, might be problematic.

[17]Several delegations proposed that reference should be made to the possibility of using modern means of communication in the transmission of requests. One delegation proposed that, if any provisions on the consideration of extradition were included in the convention, the corresponding article in the Model Treaty on Extradition (General Assembly resolution 45/116, annex) should be used. Two delegations proposed that the issue of interim arrest in anticipation of extradition should be noted. Another delegation was of the view that the matter was sufficiently well covered in current extradition practice.

[18]Several delegations supported the transfer of this paragraph to the present article from a separate article that had appeared in document A/AC.254/4. Some delegations, however, were of the view that it should be combined with the corresponding provision on central authorities in article 14 (Mutual legal assistance) and placed in a separate article entitled "Transmission of requests for extradition and mutual assistance", to precede the articles on those issues (see, for example, the proposal submitted by New Zealand contained in document A/AC.254/L.41). One delegation was of the view that this separate article should more generally include provisions that were common to all forms of international judicial cooperation.

[19]India had proposed (A/AC.254/L.43) the insertion following paragraph 10 of this article of a new paragraph dealing with requests for extradition of the same person or persons. Following discussions on that proposal at the fifth session of the Ad Hoc Committee, India indicated that it would present at a subsequent session a new draft that would contain language that was less obligatory. That proposal was supported by the Syrian Arab Republic (see A/AC.254/L.66 and Corr.1). Several delegations noted, however, that in their view the subject was adequately covered in paragraph 5.

[20]Italy had proposed (see A/AC.254/5/Add.8) the insertion of a new paragraph after paragraph 6 of this article to deal with the extradition of persons sentenced in absentia. The proposed text was as follows:

"1. The fact that a judgement has been issued in absentia shall not be a ground for refusal if it appears that the case has been tried with the same guarantees as when a defendant is present and if one of the following has occurred:

"*(a)* The defendant, having knowledge of the trial, has deliberately avoided being arrested; or

"*(b)* The defendant, having been regularly summoned, has deliberately failed to appear at the trial.

"2. When such conditions are not met, extradition shall in any case be granted if the requesting State gives assurance, deemed satisfactory by the requested State, that the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence."

That proposal was supported by the Syrian Arab Republic (see A/AC.254/L.66). Following discussion at the fifth session of the Ad Hoc Committee, Italy indicated that it would present a revised version of its proposal at a subsequent session of the Ad Hoc Committee.

[21]Poland had proposed (see A/AC.254/5/Add.7) the insertion of three new paragraphs at the end of this article to deal with jurisdictional issues, the exception of fiscal and political offences and the double criminality requirement (for the latter, see also footnote 23 below). Following the discussion at the fifth session of the Ad Hoc Committee, Poland stated that it would take into account the observations and comments of delegations, especially regarding the deletion of references to political offences, and present a reformulated version of its proposal.

"1. This article shall apply to the offences covered by this Convention.[22]

"2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.[23]

"3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may[24] consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary. [States Parties shall declare whether they intend to apply this paragraph.]

"4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

"5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

"6. In considering requests pursuant to this article, the requested State may refuse to comply with such requests if it has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's [gender,][25] race, religion, nationality, ethnic origin or

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[22]At the fifth session of the Ad Hoc Committee, additional paragraphs proposed by the Netherlands were supported by several delegations. Some other delegations suggested that the provisions of those paragraphs should be clarified. The Netherlands stated that it would present reformulated versions of the paragraphs at a subsequent session. The paragraphs read as follows:

"1 bis. State Parties shall apply this article also if the request for extradition includes several serious offences, punishable under the laws of the requesting and the requested States Parties by deprivation of liberty for at least [...] years, although some of the offences are other than those envisaged in paragraph 1 of this article.

"1 ter. Notwithstanding paragraphs 1 and [1 bis] of this article, States Parties may apply this article also to serious offences punishable under the laws of the requesting and the requested States Parties by deprivation of liberty for a maximum period of at least [...] years or by a more severe penalty."

For the reformulated versions of these paragraphs, see A/AC.254/5/Add.20.

[23]As indicated above, one delegation noted the need for a paragraph on the application of the principle of double criminality to extradition cases. Australia proposed the insertion of the following text (see A/AC.254/L.48):

"(...) In considering a request for extradition pursuant to this article for an offence established under article 3, paragraph 1 *(b)*, of the Convention, the requested State Party may refuse to comply with the request if the acts or omissions constituting the offence would not be punishable under the law of the requested State Party by imprisonment for a maximum period of at least one year or by a more severe penalty.

"(...) For the purpose of this article, in determining whether the acts or omissions constituting the offence would be punishable under the law of the requested State Party, it shall not matter whether:

"*(a)* The laws of the States Parties place the acts and omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

"*(b)* Under the laws of the States Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State Party shall be taken into account."

[24]At the fifth session of the Ad Hoc Committee, some delegations stated their preference for the more mandatory wording "shall" over the more discretionary wording "may".

[25]Several delegations noted that it was their understanding that the term "gender" referred to men and women. The inclusion of this term as a possible basis for discrimination might therefore depend on its clarification.

political opinions or that compliance with the request would cause prejudice to that person's position for any of these reasons.[26]

"7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

"7 bis. States Parties shall consider surrendering to each other, subject to their domestic law, under speedy and simplified procedures, any person sought for the purpose of extradition, subject to the agreement of the requested State and the consent of that person, provided that the consent has been expressed voluntarily and in full awareness of the consequences. The requested State shall afford that person the right to legal counsel.[27]

"8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

"9. *(a)* The State Party in the territory of which the offender or the alleged offender is found shall, in cases where this [Convention] [article] applies, if it does not extradite that person [for the purpose of prosecution],[28] be obliged, at the request of the State Party seeking extradition, whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, [provided that it has established jurisdiction over such

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[26]As indicated above, some delegations suggested that a request for extradition could be refused if the offence in question was punishable by capital punishment in the requesting State (see, for example, the proposal submitted by Ukraine (A/AC.254/L.80) at the fifth session of the Ad Hoc Committee). One delegation opposed such a provision and noted that paragraph 5, on the statutory conditions for extradition, would be sufficient. UNHCR further requested that a paragraph should be incorporated in the draft convention that would prohibit extradition for the purposes of the convention in cases of "political offences". UNHCR suggested the following wording: "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence, an offence related thereto or an ordinary criminal offence prosecuted for political reasons." One delegation noted that it was prepared to allow such an exception, but not in the case of heinous offences. Poland suggested that for the purposes of extradition, the offences established in articles 3, 4 and 4 ter of the draft convention should not be considered political offences or regarded as politically motivated, without prejudice to the constitutional principles and basic concepts of the domestic legal systems of States parties (see A/AC.254/5/Add.7). At the fifth session of the Ad Hoc Committee, China proposed the insertion of the following provision: "Before refusing extradition pursuant to this paragraph, the requested State Party shall consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation." At the fifth session of the Ad Hoc Committee, the United States stated that this provision should be formulated in such a way as not to create additional grounds for refusal that would apply to extradition treaties already in force that would permit extradition for the offence in question. The drafting would need to be considered further. Lithuania was of the opinion that paragraph 6 should provide a definition of the term "prejudice", since that term might be used in two senses, to mean either "an unfavourable opinion or feeling formed beforehand or without knowledge, thought or reason" or "any preconceived opinion or feeling, either favourable or unfavourable". Enforcement in the convention according to the latter meaning of the term, and thus establishment of the right of States parties to refuse extradition on the grounds that the State requesting extradition might impose an unreasonably mild punishment on the offender, would be a risky though progressive step towards limiting even further the possibilities for members of organized criminal groups to find a "safe haven" (see A/AC.254/5/Add.9).

[27]At the fifth session of the Ad Hoc Committee, this paragraph, based on a proposal initially submitted by France (see A/AC.254/L.47), followed by a proposal submitted by Australia, France and Sweden (A/AC.254/L.72), was inserted on the understanding that its drafting should be improved. For example, Ireland proposed the inclusion of a reference to giving consent before a judicial authority, while several other delegations suggested that it should be made clear that consent would refer to the simplified procedures and not to the principle of extradition. China indicated that it had legal difficulties in accepting the inclusion of the paragraph. The Syrian Arab Republic proposed its deletion.

[28]At the fifth session of the Ad Hoc Committee, three options were presented with regard to this point. In option 1, the phrase "solely on the basis of his or her nationality" would be inserted here (see, for example, the proposal submitted by France (A/AC.254/L.47) at the fourth session of the Ad Hoc Committee). According to option 2, the phrase "on the ground that the person whose extradition is sought is its own national or that a type of punishment that does not exist in the requested Party may be imposed on that person in the requesting Party" would be inserted here (see A/AC.254/L.75). According to option 3, neither of the above phrases would be inserted here (see A/AC.254/L.34 and A/AC.254/L.64).

offence under article 9 of this Convention][29] [subject to the condition of double criminality,] through proceedings in accordance with the laws of that State;[30]

"[*(a* bis*)* Notwithstanding subparagraph *(a)* of this paragraph, if a State Party considers the offence for which the extradition is sought to be not generally associated with the activities of an organized criminal group, the State Party shall not be required to take measures provided in that subparagraph;][31]

"Option 1

"[*(a* ter*)* The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution;][32]

"Option 2

"[*(a* ter*)* A State Party that submits a case for prosecution following the denial of extradition on grounds of nationality shall treat the investigation and prosecution with diligence, shall devote sufficient resources to conduct the matter effectively and shall coordinate the matter with the requesting State. It shall ensure that its mutual assistance, procedural and evidentiary laws enable effective action to be taken on the basis of evidence obtained from another State;][33]

"*(b)* Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and this State and the State seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in subparagraph *(a)* of this paragraph.

"10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and if it is in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

"11. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

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[29]Proposal submitted by China at the fourth session of the Ad Hoc Committee (see A/AC.254/L.64).

[30]The text of paragraph 9 *(a)* was drafted by an informal working group established at the request of the Chairman of the Ad Hoc Committee at its fifth session and chaired by Finland (see A/AC.254/L.82). The redrafted text was not discussed in detail at the fifth session of the Ad Hoc Committee. Three options were presented with regard to this point. According to option 1, the following sentence would be inserted here (see A/AC.254/4/Rev.4, A/AC.254/L.72 and A/AC.254/L.75): "Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State." According to option 2, the following sentence would be inserted here (see A/AC.254/L.64): "Those authorities shall take their decision taking into account the serious nature of the offence." According to option 3, neither of the above sentences would be inserted here (see A/AC.254/L.34).

[31]Proposal submitted by Japan at the fifth session of the Ad Hoc Committee (see A/AC.254/L.75).

[32]Proposal submitted by China at the fourth session of the Ad Hoc Committee (see A/AC.254/L.64).

[33]Proposal submitted by the United States at the fourth session of the Ad Hoc Committee (see A/AC.254/L.33).

"12. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition."

Eighth session: 21 February-3 March 2000

Notes by the Secretariat

2. The version of article 10 contained in document A/AC.254/4/Rev.5 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.6 and 7).

China (A/AC.254/L.181)

China suggested that paragraph 3 of article 10 should be replaced with the following:

"3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

"(...) States Parties that make extradition conditional on the existence of a treaty shall:

"*(a)* Inform the Secretary-General of the United Nations of whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention;

"*(b)* Endeavour to conclude treaties on extradition with other States Parties to this Convention in order to implement this article."

Rolling text (A/AC.254/4/Rev.8)

"Article 10[34]
"Extradition

"1. This article shall apply to the offences covered by this Convention that are punishable under the laws of both the requesting States Parties and the requested States Parties.[35]

"[2. If the request for extradition includes several separate serious crimes, but of which some are other than those covered by this Convention, the requested Party may apply this article also in respect of the latter offences.][36]

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[34]Part of the text of this article was revised at the informal consultations held during the eighth session of the Ad Hoc Committee and was recommended by the Chairmen of those informal consultations to the Ad Hoc Committee for consideration at its ninth session.

[35]Following extensive discussion during the informal consultations held at the eighth session of the Ad Hoc Committee and pursuant to a proposal made by China (A/AC.254/L.182), it was agreed to incorporate the principle of dual criminality in this paragraph and to amend paragraph 7 to ensure that minor offences were not considered extraditable.

[36]At the informal consultations held during the eighth session of the Ad Hoc Committee, some delegations expressed concern about the scope of this paragraph and suggested that it should be deleted.

"3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.[37]

"4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

"5. States Parties that make extradition conditional on the existence of a treaty shall:

"*(a)* At the time of deposit of their instrument of ratification, acceptance or approval of this Convention, inform the Secretary-General of the United Nations of whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

"*(b)* When they do not take this Convention as the legal basis for cooperation on extradition, [endeavour to conclude] [consider concluding] treaties on extradition with other States Parties to this Convention in order to implement this article.

"6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

"7. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

"8. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any of these reasons.[38]

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[37]At the informal consultations held during the eighth session of the Ad Hoc Committee, Pakistan expressed reservations regarding this paragraph and suggested that it should be deleted.

[38]Some delegations suggested that this paragraph should be deleted. At the informal consultations held during the eighth session of the Ad Hoc Committee, Italy proposed the insertion after paragraph 8 of the following provision:

> "Without prejudice to the use of other grounds for refusal, the requested State may refuse to extradite on the ground that a decision has been issued in absentia only if it is not proved that the case has been tried with the same guarantees as when a defendant is present and he or she, having knowledge of the trial, has deliberately avoided being arrested or has deliberately failed to appear at the trial. However, when such proof is not given, extradition may not be refused if the requesting State gives assurance, deemed satisfactory by the requested State, that the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence."

In the discussion that followed, several delegations expressed serious concerns about whether this provision could be compatible with the fundamental principles of their legal systems. Italy undertook to consult further with other interested delegations and to explore the possibility of reformulating the text in order to meet all concerns. At the informal consultations held during the eighth session of the Ad Hoc Committee, Poland proposed (A/AC.254/L.159) the insertion after paragraph 8 of the following provision:

> "For the purposes of extradition under this article, the offences established in articles 3, 4, 4 ter and 17 bis of this Convention shall not be considered fiscal offences, without prejudice to basic concepts of the domestic legal systems of States Parties."

That proposal might be reviewed in conjunction with article 14. Luxembourg and Switzerland expressed concerns about the inclusion of such a provision in article 10.

"9. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.[39]

"[Old paragraph 7 bis was deleted.][40]

"10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

"11. [*(a)* Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a State Party in whose territory an alleged offender is found shall, if it does not extradite him or her in respect of an offence established in accordance with articles 3, 4, 4 ter or 17 bis of this Convention and a serious crime involving an organized criminal group and has established its jurisdiction over the offence in accordance with paragraph 3 or 4 of article 9 of this Convention, be obliged, at the request of the State Party seeking extradition, to submit the case without undue delay to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of the State where the offender is found;[41, 42]

"Option 1

"[*(a* bis*)* The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution;]"[43]

"Option 2

"[*(a* bis*)* A State Party that submits a case for prosecution following the denial of extradition on grounds of nationality shall treat the investigation and prosecution with diligence, shall devote sufficient resources to conduct the matter effectively and shall coordinate the matter with the requesting State. It shall ensure that its mutual assistance, procedural and evidentiary laws enable effective action to be taken on the basis of evidence obtained from another State;]

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[39]This paragraph should not be interpreted as prejudicing in any way the fundamental legal rights of the defendant. At the informal consultations held during the eighth session of the Ad Hoc Committee, Pakistan proposed the insertion of the words "subject to their domestic laws".

[40]One example of implementation of paragraph 9 would be speedy and simplified procedures of extradition, subject to the domestic law of the requested party for the surrender of persons sought for the purpose of extradition, subject to the agreement of the requested party and the consent of the person in question. The consent, which should be expressed voluntarily and in full awareness of the consequences, should be understood as being in relation to the simplified procedures and not to the extradition itself.

[41]The text of this subparagraph was based on a proposal submitted by Japan (A/AC.254/L.156) at the informal consultations held during the eighth session of the Ad Hoc Committee and remained under review. The structure of the text and the scope of the principle of *aut dedere aut judicare* were among the issues that needed to be discussed.

[42]At the informal consultations held during the eighth session of the Ad Hoc Committee, there was a discussion on whether to insert after this subparagraph additional text along the lines of the two options presented in footnote 30 above. The issues addressed in either of those options were deemed to be related to the issues addressed in either of the options for subparagraph *(a bis)*. Delegations agreed that an appropriate text combining both issues and the corresponding options could be drafted at the ninth session of the Ad Hoc Committee.

[43]As indicated above, this proposal was submitted by China at the fourth session of the Ad Hoc Committee (A/AC.254/L.64). Several delegations expressed their preference for this option at the informal consultations held during the eighth session of the Ad Hoc Committee.

"*(b)* Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and this State and the State seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in subparagraph *(a)* of this paragraph.

"12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and if it is in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

"13. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

"14. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

"15. Before refusing extradition, the requested State Party shall [whenever possible or when requested by the requesting State Party] [where appropriate or when requested by the requesting State Party] consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation."[44]

Ninth session: 5-16 June 2000

United States of America (A/AC.254/L.213)

The United States proposed that article 10, paragraph 11 *(a)*, would read as follows:

"11. *(a)* A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence covered by this Convention on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the laws of that State."

[44]At the informal consultations held during the eighth session of the Ad Hoc Committee, there was extensive discussion regarding the formulation of this paragraph. Several delegations stated that, notwithstanding practical considerations that the words "where appropriate" or "whenever possible" were intended to address, the obligatory nature of this paragraph should not be affected, especially in connection with paragraph 8 of this article.

Rolling text A/AC.254/4/Rev.9 and Corr.1

"Article 10[45]
"Extradition

"1. This article shall apply to the offences covered by this Convention that are punishable under the laws of both the requesting States Parties and the requested States Parties.

"2. If the request for extradition includes several separate serious crimes, but of which some are other than those covered by this Convention, the requested Party may apply this article also in respect of the latter offences.

"3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

"4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

"5. States Parties that make extradition conditional on the existence of a treaty shall:

"*(a)* At the time of deposit of their instrument of ratification, acceptance or approval of this Convention, inform the Secretary-General of the United Nations of whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

"*(b)* If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

"6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

"7. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

"8. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any of these reasons.

[45]Paragraphs 1 to 10 of this article were approved by the Ad Hoc Committee at its ninth session. Concerning paragraph 1, see note 3 by the Secretariat below.

"9. States Parties shall, subject to their domestic laws, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

"10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

"11. [*(a)* Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a State Party in whose territory an alleged offender is found shall, if it does not extradite him or her in respect of an offence established in accordance with articles 3, 4, 4 ter or 17 bis of this Convention and a serious crime involving an organized criminal group and has established its jurisdiction over the offence in accordance with paragraph 3 or 4 of article 9 of this Convention, be obliged, at the request of the State Party seeking extradition, to submit the case without undue delay to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of the State where the offender is found;]

"Option 1

"[*(a* bis*)* The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution;]

"Option 2

"[*(a* bis*)* A State Party that submits a case for prosecution following the denial of extradition on grounds of nationality shall treat the investigation and prosecution with diligence, shall devote sufficient resources to conduct the matter effectively and shall coordinate the matter with the requesting State. It shall ensure that its mutual assistance, procedural and evidentiary laws enable effective action to be taken on the basis of evidence obtained from another State;]

"*(b)* Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and this State and the State seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in subparagraph *(a)* of this paragraph.

"12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and if it is in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

"13. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and

guarantees provided by the law of the State in the territory of which that person is present.

"14. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

"15. Before refusing extradition, the requested State Party shall [whenever possible or when requested by the requesting State Party] [where appropriate or when requested by the requesting State Party] consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation."

Notes by the Secretariat

3. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 10, as amended. Paragraph 1 was finally structured on the basis of the recommendation of an informal working group on articles 10 and 14 of the draft convention (see A/AC.254/L.233). The recommended text was as follows:

"1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 2, paragraph 1 *(a)* or *(b)*, involves an organized criminal group and the person who is the subject of the request for extradition is located in the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party."

A further paragraph was inserted in the article, providing for the non-inclusion among the grounds for denying extradition of the fact that the offence concerned is also considered to involve fiscal matters. The same provision was also incorporated in article 14 of the draft convention, on mutual legal assistance (see article 18 of the convention). The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 16
Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 *(a)* or *(b)*, involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

C. Interpretative notes

The interpretative notes on article 16 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 28-35) are as follows:

Paragraph 2

(a) The purpose of paragraph 2 is to serve as an instrument for States parties wishing to avail themselves of the facility it provides. It is not intended to broaden the scope of the article unduly.

Paragraph 8

(b) This paragraph should not be interpreted as prejudicing in any way the fundamental legal rights of the defendant.

(c) One example of implementation of this paragraph would be speedy and simplified procedures of extradition, subject to the domestic law of the requested State party for the surrender of persons sought for the purpose of extradition, subject to the agreement of the requested State party and the consent of the person in question. The consent, which should be expressed voluntarily and in full awareness of the consequences, should be understood as being in relation to the simplified procedures and not to the extradition itself.

Paragraph 10

(d) States parties should also take into consideration the need to eliminate safe havens for offenders who commit heinous crimes in circumstances not cov-

ered by paragraph 10. Several States indicated that such cases should be reduced and several States stated that the principle of *aut dedere aut judicare* should be followed.

Paragraph 12

(e) The action referred to in paragraph 12 would be taken without prejudice to the principle of double jeopardy (*ne bis in idem*).

Paragraph 14

(f) The term "sex" refers to male and female.

(g) At the informal consultations held during the eighth session of the Ad Hoc Committee, Italy proposed the insertion after paragraph 8 of the following provision:

"Without prejudice to the use of other grounds for refusal, the requested State may refuse to extradite on the ground that a decision has been issued in absentia only if it is not proved that the case has been tried with the same guarantees as when a defendant is present and he or she, having knowledge of the trial, has deliberately avoided being arrested or has deliberately failed to appear at the trial. However, when such proof is not given, extradition may not be refused if the requesting State gives assurance, deemed satisfactory by the requested State, that the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence."

In the discussion that followed, several delegations expressed serious concerns about whether this provision would be compatible with the fundamental principles of their respective legal systems. Italy withdrew its proposal at the ninth session of the Ad Hoc Committee on the understanding that, when considering a request for extradition pursuant to a sentence issued in absentia, the requested State party would take into due consideration whether or not the person whose extradition was sought had been sentenced following a fair trial, for example, whether or not the defendant had been assured the same guarantees as he or she would have enjoyed had he or she been present at the trial and had voluntarily escaped from justice or failed to appear at the trial, or whether or not he or she was entitled to a new trial.

Paragraph 16

(h) The words "where appropriate" in article 16, paragraph 16, are to be understood and interpreted in the spirit of full cooperation and should not affect, to the extent possible, the obligatory nature of the paragraph. The requested State party shall, when applying this paragraph, give full consideration to the need to bring offenders to justice through extradition cooperation.

Article 17. Transfer of sentenced persons

A. Negotiation text

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. The text of this article was initially included as paragraph 13 in article 10 (Extradition) of the draft convention contained in document A/AC.254/4/Rev.4. At the fifth session of the Ad Hoc Committee, in the context of discussions on the content of article 10, the provision on the transfer of sentenced persons was moved and included in the text of the draft convention contained in document A/AC.254/4/Rev.5 as a separate article 10 bis, reading as follows:

"Article 10 bis
"Transfer of sentenced persons

> "States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there."

The content of this article was not further modified. At its tenth session, the Ad Hoc Committee considered, finalized and approved the article, as amended. See the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 17
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18. Mutual legal assistance

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 14
"Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legislation on legal assistance[1] in investigations, prosecutions and judicial proceedings in relation to an offence established in article(s) [...] [*alternatively*: to an offence covered by this Convention] and shall exercise flexibility[2] in the execution of requests for such mutual assistance.

"2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[3]

"*(a)* Taking evidence or statements from persons;

"*(b)* Effecting service of judicial documents;

"*(c)* Executing searches and seizures;

"*(d)* Examining objects and sites;

"*(e)* Providing information and evidentiary items;

"*(f)* Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;

"*(g)* Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

"*(h)* Facilitating the appearance of persons in the requesting State;

"*(i)* Any other type of assistance allowed by the law of the requested State.

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[1]At the informal preparatory meeting held in Buenos Aires in 1998, some delegations expressed the concern that this provision could limit the obligations under this article. As issues related to the manner of execution of requests for mutual assistance were governed by paragraph 10, there was no need for this provision. Other delegations felt that the provision should be retained and moved to the first line of the paragraph after the word "shall".

[2]At the informal preparatory meeting, some delegations felt that this term was ambiguous and perhaps a better formulation could be found, as there was agreement that the purpose of the paragraph was to ensure that the article would be interpreted in a manner that would facilitate mutual assistance.

[3]Some delegations felt that article 14 should not create detailed obligations to provide specific forms of mutual assistance. In their view, paragraph 2 could instead read as follows: "States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them or pursuant to domestic law".

"3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual assistance in criminal matters.[4]

"4. Paragraphs 6-21 shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6-21 of this article in lieu thereof.

"5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

"6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.

"7. States Parties shall [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree. Transfer under this paragraph shall not be for the purpose of standing trial. For purposes of this paragraph:

"*(a)* The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

"*(b)* The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit][5] or as otherwise agreed by the competent authorities of both States;

"*(c)* The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

"*(d)* The person transferred shall receive credit for service of the sentence imposed in the State from which he was transferred for time served in the custody of the State to which he or she was transferred.

"8. States Parties shall designate a central authority, or when necessary central authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution.[6] Central authorities shall play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement

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[4]At the informal preparatory meeting, it was suggested that the substance of this paragraph could be integrated with a more general article on the relationship of the convention to other bilateral or multilateral treaties.

[5]The expression "as soon as circumstances permit" was considered by some delegations to be ambiguous and, therefore, it was proposed to delete it.

[6]At the informal preparatory meeting, it was noted that this provision might cause difficulties in respect of territories that did not have full sovereignty.

shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization (Interpol), if possible.

"9. Requests shall be made in writing or by any means capable of producing a written record[7] in a language acceptable to the requested State Party. The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances, and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

"10. A request for mutual legal assistance shall contain:

"*(a)* The identity of the authority making the request;

"*(b)* The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

"*(c)* A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

"*(d)* A description of the assistance sought and details of any particular procedure the requesting State Party wishes to be followed;

"*(e)* Where possible, the identity, location and nationality of any person concerned;

"*(f)* The purpose for which the evidence, information or action is sought.

"11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

"12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

"13. Wherever possible and consistent with fundamental principles of domestic law, States Parties shall permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and shall ensure that perjury committed under such circumstances is a criminal offence.

"14. The requesting State Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

"15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

[7]At the informal preparatory meeting, it was agreed that this expression should be deemed to include the submission of a request by modern means of communications, under circumstances that provide an indication of authenticity.

"16. Mutual legal assistance may be refused:[8]

"*(a)* If the request is not made in conformity with the provisions of this article;

"*(b)* If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

"*(c)* If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

"*(d)* If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;[9]

"*(e)* If the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

"17. For the purpose of cooperation under this article, the offences covered by this Convention shall not be considered fiscal offences or political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.

"18. Reasons shall be given for any refusal of mutual legal assistance.

"19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

"20. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.[10]

"21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

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[8]At the informal preparatory meeting, it was suggested that other grounds for refusal might be required. One possible additional ground might be a "discrimination clause" as in article 6, paragraph 6, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627). Another ground might be a "political offence", in which case paragraph 17 would require re-examination.

[9]Some delegates expressed concern about this ground for refusal. They regarded it as overly broad.

[10]At the informal preparatory meeting, some delegations thought a degree of discretion could be provided to the requesting State in determining whether to provide safe conduct. One delegation expressed a reservation on this paragraph.

"22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article."

Rolling text (A/AC.254/4/Rev.1)

"Article 14
"Mutual legal assistance[11]

"1. States Parties shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legislation[12] on legal assistance in investigations, prosecutions and judicial proceedings in relation to an offence established in article(s) [...] [*alternatively*: to an offence covered by this Convention][13] and shall exercise flexibility in the execution of requests for such mutual assistance.

"2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[14]

"*(a)* Taking evidence or statements from persons;

"*(b)* Effecting service of judicial documents;

"*(c)* Executing searches and seizures;

"*(d)* Examining objects and sites;

"*(e)* Providing information and evidentiary items;

"*(f)* Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;

"*(g)* Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

"*(h)* Facilitating the appearance of persons in the requesting State;

"*(i)* Any other type of assistance allowed by the law of the requested State.

"3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

"4. Paragraphs 6-21 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6-21 in lieu thereof.

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[11]One delegation noted that it would prepare a proposal regarding the amendment of this article for the second session of the Ad Hoc Committee. Several delegations proposed that the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex) should be used as the basis for the drafting of this article. One delegation proposed that the corresponding provisions in the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) should be taken as the basis for this article.

[12]One delegation noted that the phrase "within the conditions prescribed by domestic law" overlapped similar phrasing in paragraph 12. The delegation proposed that a single provision should be drafted on the relationship with domestic law that would not limit the obligations under the convention.

[13]One delegation was of the view that this article should apply only to offences established by the convention.

[14]One delegation noted that the wording of this paragraph implied that the list of measures was intended to be exhaustive.

"5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

"6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.[15]

"7. States Parties shall[16] [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree.[17] Transfer under this paragraph shall not be for the purpose of standing trial. For purposes of this paragraph:

"*(a)* The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

"*(b)* The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit] or as otherwise agreed by the competent authorities of both States;

"*(c)* The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

"*(d)* The person transferred shall receive credit for service of the sentence imposed in the State from which he or she was transferred for time served in the custody of the State to which he or she was transferred.

"8. States Parties shall designate a central authority or, when necessary, central authorities[18] which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. Central authorities shall play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.[19]

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[15]One delegation proposed the deletion of this paragraph. Another delegation noted that the connection between this paragraph and paragraph 16 should be reviewed.

[16]One delegation was of the view that the word "shall" should be replaced with the word "may".

[17]One delegation proposed that paragraph 20 should immediately follow this paragraph.

[18]One delegation proposed the elimination of the words "or, when necessary, central authorities".

[19]Some delegations were of the view that this paragraph should be combined with the corresponding provision on central authorities in article 10, on extradition, and be placed in a separate article entitled "Transmission of requests for extradition and mutual assistance", to precede the articles on these issues. One delegation was of the view that the separate article should more generally include provisions that were common to all forms of international judicial cooperation.

"9. Requests shall be made in writing or by any means capable of producing a written record in a language acceptable to the requested State Party. The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances, and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

"10. A request for mutual legal assistance shall contain:

"*(a)* The identity of the authority making the request;

"*(b)* The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

"*(c)* A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

"*(d)* A description of the assistance sought and details of any particular procedure the requesting State Party wishes to be followed;

"*(e)* Where possible, the identity, location and nationality of any person concerned;

"*(f)* The purpose for which the evidence, information or action is sought.

"11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

"12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.[20]

"13. Wherever possible and consistent with fundamental principles of domestic law, States Parties shall permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and shall ensure that perjury committed under such circumstances is a criminal offence.[21]

"14. The requesting State Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.[22]

"15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

"16. Mutual legal assistance may be refused:[23]

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[20]One delegation noted that this paragraph and paragraph 1 overlapped in part.

[21]Several delegations expressed concern about this paragraph. Some delegations noted that, under their legal systems, defendants in criminal cases who made false statements could not be convicted of perjury.

[22]One delegation proposed that the use of evidence should be restricted only when the requested State so indicated. One delegation proposed that the paragraph should be deleted.

[23]One delegation proposed as an additional ground for refusal the fact that the requested State reasonably believed that the offence in question did not involve organized crime.

"*(a)* If the request is not made in conformity with the provisions of this article;

"*(b)* If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

"*(c)* If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence,[24] had it been subject to investigation, prosecution or proceedings under their own jurisdiction;[25]

"*(d)* If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;

"*(e)* If the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.[26]

"17. For the purpose of cooperation under this article, the offences covered by this Convention shall not be considered fiscal offences or political offences[27] or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.

"18. Reasons shall be given for any refusal of mutual legal assistance.

"19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

"20. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party.[28] Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

"21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.[29]

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[24]One delegation noted that the phrase "similar offence" required clarification.

[25]Some delegations expressed reservations about this subparagraph. One delegation proposed that the subparagraph should be deleted, since the issue would nonetheless be regulated by the subparagraph that followed.

[26]Some delegations proposed that this subparagraph should be deleted.

[27]One delegation was of the view that the "political offence" exception could be discretionary except in certain heinous cases. Another delegation proposed the deletion of the reference to political offences.

[28]One delegation expressed concern about cases where a dangerous offender might deliberately utilize this provision in order to evade justice.

[29]One delegation noted that the wording of this paragraph required clarification.

"22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article."[30]

Fourth session: 28 June-9 July 1999

Notes by the Secretariat

1. The version of article 14 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2 and 3).

Rolling text (A/AC.254/4/Rev.4)

"Article 14
"Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance [, within the conditions prescribed by the domestic legislation][31] in investigations,[32] prosecutions and judicial proceedings in relation to the crimes or offences covered by this Convention, as provided for in article 2, paragraph 1.[33]

"[1 bis. Without prejudice to the other limitations to the obligation to assist set forth in this article, mutual legal assistance also shall be afforded where the requesting State Party is investigating a serious crime and suspects the involvement of an organized criminal group.][34]

"[1 ter. Each State Party shall, to the fullest extent possible under its relevant laws, treaties and arrangements, provide prompt and effective cooperation to another Party for proceedings brought by a State Party against a legal person under article 5 of this Convention.][35]

"[1 quater. No State Party shall be entitled to undertake, in the territorial jurisdiction of any other State Party, the performance or discharge of any functions for

[30]One delegation noted that the wording of this paragraph required clarification. Another delegation proposed that the paragraph should be deleted.

[31]As indicated above, several delegations suggested that this phrase should be deleted, on the ground that the concern was adequately met by paragraph 12. One delegation disagreed, noting that paragraph 12 related to a question of procedure.

[32]Some delegations were of the view that, since the concept of "investigations" in paragraph 1 assumed the suspicion of involvement in crime, paragraph 1 bis was redundant.

[33]Some delegations preferred a more descriptive formulation of the scope of this paragraph.

[34]Based on a proposal submitted by Canada at the fourth session of the Ad Hoc Committee (see A/AC.254/L.42). One delegation noted that in view of the operational and financial resources to be expended by the requested State, a proper basis must exist before assistance commenced.

[35]This paragraph, based on a proposal submitted by the United States (see A/AC.254/L.33), was inserted on the ground that, according to the laws of some States, legal persons as such could not be suspects or defendants in a criminal case and thus would not otherwise be covered by the present article. Delegations generally supported the idea contained in this paragraph, although some were of the view that it was already covered by paragraph 1. A number of delegations favoured the following alternative formulation: "Mutual legal assistance shall be afforded with respect to investigations, prosecutions and judicial proceedings relating to offences for which a legal person may be held liable in the requesting State Party."

which the jurisdiction or competence is reserved exclusively for the authorities of that other Party under its domestic laws or regulations.][36]

"2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[37]

"*(a)* Taking evidence or statements from persons;

"*(b)* Effecting service of judicial documents;

"*(c)* Executing searches, [freezing][38] and seizures;

"[*(c* bis*)* The seizure, confiscation and surrender of property;][39]

"*(d)* Examining objects and sites;

"*(e)* Providing information, evidentiary items [and expert evaluations];[40]

"*(f)* Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;[41]

"*(g)* Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

"*(h)* Facilitating the appearance of persons in the requesting State Party;

"[*(h* bis*)* Locating or identifying persons or objects;][42]

"*(i)* Any other type of assistance allowed by the law of the requested [or requesting][43] State Party.

"2 bis. Without prejudice to national law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by that authority pursuant to this Convention.

"2 ter. The transmission of such information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use.[44]

"3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

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[36]This paragraph was proposed by Mexico at the fourth session of the Ad Hoc Committee (see A/AC.254/L.44). The Chairman indicated that it required further consideration.

[37]Belgium suggested that this paragraph should be reformulated in order to ensure that it did not imply that the list of measures was exhaustive. Other delegations supported that suggestion.

[38]Proposal of China.

[39]Proposal of Mexico.

[40]The text in square brackets was proposed by China.

[41]Some delegations pointed out that the issues of money-laundering and bank secrecy were still under consideration. This subparagraph would therefore need to be reviewed in the light of agreement on article 4 bis.

[42]Proposal of China.

[43]Proposal of Finland.

[44]Paragraphs 2 bis and 2 ter were proposed by Italy (see A/AC.254/5/Add.8) and received wide support. There were suggestions for refinement of the text, also in order to avoid overlap with the provisions of article 19, on law enforcement cooperation. According to some delegations, a possible model for a more streamlined text might be found in article 28 of the 1999 Council of Europe Criminal Law Convention on Corruption. One delegation suggested that the two paragraphs could be placed in a separate article entitled "Spontaneous communication of information".

"4. Paragraphs 6 to 21 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6 to 21 in lieu thereof.

"5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.[45]

"6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.[46]

"7. States Parties shall[47] [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree. Transfer under this paragraph shall not be for the purpose of standing trial. For the purposes of this paragraph:[48]

"*(a)* The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

"*(b)* The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit][49] or as otherwise agreed by the competent authorities of both States;

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[45]This paragraph received broad support. However, some delegations expressed reservations about it.

[46]This paragraph received considerable support. However, several delegations expressed reservations on the ground that, in view of the broad scope of the convention, the principle of dual criminality had to apply to mutual legal assistance. In an effort to find a compromise solution, China proposed the formulation below (see A/AC.254/L.50):

> "The requested State Party shall be obliged to provide assistance only if the conduct in relation to which the request was made would constitute an offence under its domestic law. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it may decide at its discretion, irrespective of whether the conduct would constitute an offence under the laws of both the requesting and requested States Parties."

Several delegations supported the proposal of China. The United Kingdom of Great Britain and Northern Ireland proposed as a compromise formulation that the original paragraph should be made applicable only to offences established by the convention. Some delegations noted that the connection between this paragraph and paragraph 16 should be reviewed. Singapore pointed out that the 1986 Commonwealth Scheme for Mutual Assistance in Criminal Matters provided for dual criminality as a ground for refusal. Some delegations pointed out that the term "coercive measures" might have a different meaning in different jurisdictions.

[47]Although some delegations deemed it important that this provision should be mandatory, other delegations proposed that "shall" should be changed to "may". Germany proposed the formulation "States shall endeavour to adopt". Some delegations noted that alternative formulations were contained in article 13 of the International Convention for the Suppression of Terrorist Bombings and article 93 of the Statute of the International Criminal Court (A/CONF.183/9). Singapore proposed the formulation of article 13, paragraph 1, of the Model Treaty on Mutual Assistance in Criminal Matters, which reads as follows:

> "Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations."

One delegation noted the operational and security implications and suggested the possibility of alternative methods of obtaining the assistance or testimony of the person in custody, which would obviate the need for his or her physical transfer, such as the use of video link facilities.

[48]Some delegations proposed that this paragraph should be made into a separate article. Belgium suggested that this paragraph should be supplemented with the following text: "If the transferred person flees, the State to which that person was transferred shall take every possible measure to ensure his or her apprehension."

[49]Several delegations proposed the deletion of the words "as soon as circumstances permit". China proposed that the phrase should be replaced with the words "as soon as the person has finished giving evidence or assisting in the investigations".

"*(c)* The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition[50] proceedings for the return of the person;

"*(d)* The person transferred shall receive credit for service of the sentence imposed in the State from which he or she was transferred for time served in the custody of the State to which he or she was transferred.[51]

"8. States Parties shall designate a central authority or, when necessary, central authorities[52] that shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. Central authorities shall play an active role in ensuring the speedy execution of requests [, controlling quality and setting priorities].[53] The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the Parties agree, through the International Criminal Police Organization, if possible.

"9. Requests shall be made in writing or, where possible,[54] by any means capable of producing a written record in a language acceptable to the requested State Party, under conditions allowing that Party to establish authenticity.[55] The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

"10. A request for mutual legal assistance shall contain:

"*(a)* The identity of the authority making the request;

"*(b)* The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting the investigation, prosecution or proceeding;

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[50]France proposed that the words "extradition proceedings" should be replaced with the words "extradition or other proceedings".

[51]Mexico proposed the insertion of the following subparagraph: "The authorities of the requested State Party may be present at proceedings conducted in the requesting State Party."

[52]As indicated above, some delegations proposed the deletion of the words "or, when necessary, central authorities" (see, for example, the proposal submitted by Canada contained in document A/AC.254/L.42). Some other delegations were in favour of retaining this reference. Several delegations emphasized that a distinction was necessary between the authorities responsible for receiving or forwarding requests and those competent to execute requests. Australia proposed to make this distinction by referring to "central offices for authorities only receiving or forwarding requests and to "competent authority" for authorities executing requests. China proposed the deletion of the word "central" from this paragraph, or (see A/AC.254/L.50) the insertion of the following sentence after the first sentence of this paragraph: "States Parties may also designate other authorities for the same purpose for its special regions or territories that have separate systems of mutual legal assistance." Canada referred to a proposal it had made on this matter in document A/AC.254/L.42 and indicated that it would continue consultations with other interested delegations with a view to formulating a text that would attract consensus.

[53]Some delegations proposed the deletion of the phrase in square brackets, inter alia, on the ground that it could be seen to be in contradiction to the principle of the independence of the judiciary. One delegation recalled that the phrase had been taken from the amendments to the Model Treaty on Mutual Assistance in Criminal Matters.

[54]It was agreed at the fourth session of the Ad Hoc Committee to include this clause in order to take into account the limited capabilities of many countries, especially developing countries, and in order to emphasize that modern means of communication were useful for the transmission of urgent requests. One delegation noted that the provision sought to balance the competing interests of the requesting State to obtain speedy execution of requests and of the requested State to ensure that action was taken only on the basis of credible and substantial information.

[55]The last phrase of this sentence was previously contained in a footnote and was moved into the body of the text pursuant to a proposal made by France and widely supported at the fourth session of the Ad Hoc Committee.

"*(c)* A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

"*(d)* A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

"*(e)* Where possible, the identity, location and nationality of any person concerned;

"*(f)* The purpose for which the evidence, information or action is sought.[56]

"11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

"12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.[57]

"13. Wherever possible and consistent with fundamental principles of domestic law, a State Party shall permit [encourage] testimony, statements or other forms of assistance to be given via video link or other modern means of communication and, subject to domestic law, shall ensure that perjury committed under such circumstances is a criminal offence.[58, 59]

"14. The requesting State Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

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[56]At the fourth session of the Ad Hoc Committee it was pointed out that the source of this paragraph was the 1988 Convention. Colombia expressed preference for a simplified version of the text.

[57]Canada submitted a proposal for the reformulation of the text of this paragraph (see A/AC.254/L.42), as follows: "A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not prohibited by that law, in the manner and in accordance with the procedures specified in the request". This proposal received limited support. Italy submitted a proposal (see A/AC.254/5/Add.8) for the reformulation of this paragraph and the addition of another paragraph, as follows:

"1. Where mutual assistance is afforded and such formalities and procedures are not contrary to the fundamental principles of law in the requested State, the requested State shall undertake to comply, for purposes of executing letters rogatory, with formalities and procedures expressly indicated by the requesting State. The requested State shall execute the request for assistance as soon as possible and shall take as full account as possible of any deadlines set by the requesting State.

"2. Where the request cannot be executed in full accordance with the requirements set by the requesting State, the authorities of the requested State shall promptly inform the authorities of the requesting State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting State and the requested State may subsequently agree on further action to be taken concerning the request, where necessary making such action subject to the fulfilment of those conditions."

The Ad Hoc Committee was of the view that the ideas contained in that proposal merited further consideration. In particular, the second paragraph of that proposal might be considered further in conjunction with paragraph 19 of this article.

[58]Several delegations expressed concern about the criminalization of perjury in this paragraph (see, for example, the view of the Syrian Arab Republic contained in document A/AC.254/L.34). The clause on domestic law was inserted to make such criminalization optional and thus meet those concerns. Nevertheless, several delegations expressed their preference for the deletion of the provision.

[59]Japan suggested that the adoption of the necessary measures enabling testimony via video link should be optional. Italy proposed the insertion of several new paragraphs after paragraph 13 (see A/AC.254/5/Add.8). The first paragraph of that proposal was favourably received at the fourth session of the Ad Hoc Committee as a potential alternative to paragraph 13. The first paragraph of the proposal by Italy read as follows:

"Where an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by videoconference if the criminal proceedings for which the hearing was requested provide appropriate guarantees of conformity with its fundamental principles of law and where it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State."

The rest of the proposal made by Italy was found to contain many useful concepts and ideas, but was deemed too lengthy and detailed for an international legal instrument.

"15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

"16. Mutual legal assistance may be refused:

"*(a)* If the request is not made in conformity with the provisions of this article;

"*(b)* If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

"*(c)* If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

"*(d)* If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;

"*(e)* If the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.[60]

"17. For the purpose of cooperation under this article, the offences covered by this Convention shall not be considered fiscal offences or political offences[61] or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.

"18. Reasons shall be given for any refusal of mutual legal assistance.

"19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

"20. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has

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[60]The United States proposed the deletion of subparagraphs *(c)*, *(d)* and *(e)* and their replacement with new subparagraphs constituting the "political offence exception" and the so-called "discrimination clause" (existence of substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality or political opinion) (see A/AC.254/L.33). Canada proposed the deletion of subparagraphs *(c)*, *(d)* and *(e)* and the addition of a new subparagraph as follows: "(…) If the request falls under paragraph [1 bis] of this article and the requested State considers, based on the information provided by the requesting State Party, [that there is no basis for the suspicion of the involvement of an organized criminal group in the offence] [that the suspicion is unreasonable]" (see A/AC.254/L.42).

[61]One delegation was of the view that the "political offence" exception could be discretionary except in certain heinous cases. Another delegation proposed the deletion of the reference to political offences. The United States proposed the inclusion of the exception among the grounds for refusal of a mutual legal assistance request (see footnote 60 above).

nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

"21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

"22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article."

Fifth session: 4-15 October 1999

Rolling text (A/AC.254/4/Rev.5)

"Article 14
"Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance [, within the conditions prescribed by the domestic legislation] in investigations, prosecutions and judicial proceedings in relation to the crimes or offences covered by this Convention, as provided for in article 2, paragraph 1.

"[1 bis. Without prejudice to the other limitations to the obligation to assist set forth in this article, mutual legal assistance also shall be afforded where the requesting State Party is investigating a serious crime and suspects the involvement of an organized criminal group.]

"[1 ter. Each State Party shall, to the fullest extent possible under its relevant laws, treaties and arrangements, provide prompt and effective cooperation to another Party for proceedings brought by a State Party against a legal person under article 5 of this Convention.]

"[1 quater. No State Party shall be entitled to undertake, in the territorial jurisdiction of any other State Party, the performance or discharge of any functions for which the jurisdiction or competence is reserved exclusively for the authorities of that other Party under its domestic laws or regulations.]

"2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:

"*(a)* Taking evidence or statements from persons;

"*(b)* Effecting service of judicial documents;

"*(c)* Executing searches, [freezing] and seizures;

"[*(c* bis*)* The seizure, confiscation and surrender of property;]

"*(d)* Examining objects and sites;

"*(e)* Providing information, evidentiary items [and expert evaluations];

"*(f)* Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

"*(g)* Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

"*(h)* Facilitating the appearance of persons in the requesting State Party;

"[*(h* bis*)* Locating or identifying persons or objects;]

"*(i)* Any other type of assistance allowed by the law of the requested [or requesting] State Party.

"2 bis. Without prejudice to national law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by that authority pursuant to this Convention.

"2 ter. The transmission of such information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use.

"3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

"4. Paragraphs 6 to 21 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6 to 21 in lieu thereof.

"5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

"6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.

"7. States Parties shall [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or to assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree. Transfer under this paragraph shall not be for the purpose of standing trial. For the purposes of this paragraph:

"*(a)* The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

"*(b)* The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit] or as otherwise agreed by the competent authorities of both States;

"*(c)* The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

"*(d)* The person transferred shall receive credit for service of the sentence imposed in the State from which he or she was transferred for time served in the custody of the State to which he or she was transferred.

"8. States Parties shall designate a central authority or, when necessary, central authorities that shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. Central authorities shall play an active role in ensuring the speedy execution of requests [, controlling quality and setting priorities]. The Secretary-General of the United Nations shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the Parties agree, through the International Criminal Police Organization, if possible.

"9. Requests shall be made in writing or, where possible, by any means capable of producing a written record in a language acceptable to the requested State Party, under conditions allowing that Party to establish authenticity. The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

"10. A request for mutual legal assistance shall contain:

"*(a)* The identity of the authority making the request;

"*(b)* The subject matter and nature of the investigation, prosecution or proceeding to which the request relates and the name and the functions of the authority conducting the investigation, prosecution or proceeding;

"*(c)* A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

"*(d)* A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

"*(e)* Where possible, the identity, location and nationality of any person concerned;

"*(f)* The purpose for which the evidence, information or action is sought.

"11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

"12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

"13. Wherever possible and consistent with fundamental principles of domestic law, a State Party shall permit [encourage] testimony, statements or other forms of assistance to be given via video link or other modern means of communication and, subject to domestic law, shall ensure that perjury committed under such circumstances is a criminal offence.[62]

"14. The requesting State Party, if so requested by the requested State, shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall preclude the requesting Party from, in its proceedings, disclosing information or evidence that is exculpatory to an accused person.[63]

"15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

"16. Mutual legal assistance may be refused:

"*(a)* If the request is not made in conformity with the provisions of this article;

"*(b)* If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

"*(c)* If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar

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[62]As indicated above, Italy proposed the insertion of several new paragraphs after paragraph 13 (see A/AC.254/5/Add.8). At the fifth session of the Ad Hoc Committee, Italy undertook to submit a redraft of its proposal at a subsequent session. The redrafted proposal was submitted by Italy at the eighth session of the Ad Hoc Committee (see A/AC.254/L.154) and was as follows (see also the interpretative notes below):

"Article (...)
"Hearing by video conference

"1. When a person who is present in the territory of a State Party has to be heard as a witness or an expert by the judicial authorities of another State Party and it is not possible or desirable for that person to appear before those authorities, the first State Party may, upon request of the other State, consent to the hearing to take place in its territory by video conference.

"2. In the implementation of paragraph 1 of this article, the following provisions shall apply, except where agreed otherwise on a case by case basis:

"*(a)* The hearing shall be conducted by a judicial authority of the requesting State in accordance with the domestic law of that State and shall be attended by a judicial authority of the requested State; the latter shall be responsible for the identification of the person to be heard and shall, on conclusion of the hearing, draw up minutes indicating the date and place of the hearing and any oaths taken; the hearing shall be conducted without any physical or mental pressure on the person questioned;

"*(b)* If the judicial authority of the requested State considers that during the hearing the fundamental principles of the law of that State are infringed, he or she has the authority to interrupt or, if possible, to take the necessary measures to continue the hearing in accordance with those principles;

"*(c)* The person to be heard and the judicial authority of the requested State shall be assisted by an interpreter as necessary;

"*(d)* The person to be heard may claim the right not to testify as provided for by the domestic law of the requested State or of the requesting State; the domestic law of the requested State applies to perjury.

"3. All costs of the video conference shall be borne by the requesting State, which may also provide as necessary for technical equipment.

"4. To the extent permitted by their domestic law, States Parties may agree to apply, mutatis mutandis, the provisions of this article to hearing of accused persons."

[63]This paragraph was redrafted at the fifth session of the Ad Hoc Committee on the basis of the summary of the Chairman. One delegation pointed out that the first sentence would require further consideration. Another delegation expressed concern that the second sentence left open to the requesting State party the possibility of using the information or evidence for a purpose other than that noted in the request.

offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;[64]

"*(d)* If it would be contrary to the fundamental principles of the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;

"*(e)* If the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality or political opinions;[65]

"*(f)* If the request relates to an offence that is considered by the requested State Party to be a political offence;[65]

"*(g)* If the request falls under subparagraph [1 bis] of this article and the requested State Party considers, based on the information provided by the requesting State Party, [that there is no basis for the suspicion of the involvement of an organized criminal group in the offence] [that the suspicion is unreasonable].[66]

"17. For the purpose of cooperation under this article, the offences established in articles [...] of this Convention shall not be considered fiscal [or customs] offences, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.[67]

"18. Reasons shall be given for any refusal of mutual legal assistance.

"[18 bis. If, within six months of the submission of its request, the requesting State Party has not received any information on action taken pursuant to that request, the requesting Party may petition the requested State Party in this regard. The requested Party shall inform the requesting Party about the reason for the lack of any communication regarding the request.][68]

"19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding.

"19 bis. Before refusing a request pursuant to paragraph 16 of this article or postponing its execution pursuant to paragraph 19, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.[69]

"20. A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investiga-

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[64]Many delegations expressed the view that subparagraphs *(c)* and *(d)*, contained in document A/AC.254/4/Rev.4, should be deleted.

[65]A number of delegations were of the view that subparagraphs *(e)* and *(f)*, proposed, as indicated above (see footnote 60) by the United States (see A/AC.254/L.33), were already covered by the concept of "essential interests" in subparagraph *(b)*. It was noted that the inclusion of these subparagraphs might imply that subparagraph *(b)* had a more limited scope than would otherwise be understood. Accordingly, a number of delegations considered that retaining these subparagraphs would require the inclusion of other express grounds for refusal, such as the possible imposition of the death penalty, double jeopardy and lapse of time.

[66]As indicated above (see footnote 60), subparagraph *(g)* was proposed by Canada at the fourth session of the Ad Hoc Committee (see A/AC.254/L.42). It replaced subparagraph *(e)* as presented in document A/AC.254/4/Rev.4.

[67]At the fifth session of the Ad Hoc Committee, Canada, Finland, the Netherlands and Switzerland undertook to submit a redrafted version of this paragraph.

[68]This paragraph was submitted by France at the fifth session of the Ad Hoc Committee.

[69]Based on a proposal submitted by China at the fourth session of the Ad Hoc Committee (see A/AC.254/L.50).

tion, prosecution or judicial proceeding in the territory of the requesting Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting Party or, having left it, has returned of his or her own free will.

"20 bis. The authorities of the requested State Party may request to be present in proceedings conducted in the territory of the requesting State Party.[70]

"21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.[71]

"21 bis. *(a)* The requested State Party shall provide copies of government records, documents or information in its possession that, under its laws, are available to the general public;

"*(b)* The requested State Party may, at its discretion, provide in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its laws are not available to the general public.[72]

"22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article."

Tenth session: 17-28 July 2000

Notes by the Secretariat

2. The version of article 14 contained in document A/AC.254/4/Rev.5 remained unchanged in the intermediate drafts of the Convention (A/AC.254/4/Revs.6-9 and Corr.1). The only changes in documents A/AC.254/4/Rev.8 and A/AC.254/4/Rev.9 were the renumbering of paragraphs and subparagraphs and an editorial redrafting of paragraph 5 *(d)*. The draft text of the article, on which delegations based their comments at the tenth session of the Ad Hoc Committee, was as follows:

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[70]This paragraph was proposed by Mexico. It was originally contained in document A/AC.254/L.44 and is presented here as further amended by Mexico at the fifth session of the Ad Hoc Committee.

[71]One delegation noted that the wording of this paragraph required clarification. Bangladesh suggested that the modalities for sharing ordinary costs of executing the request should be decided through mutual consultation between the requesting State party and the requested State party.

[72]This provision, based on a proposal submitted by the United States at the fourth session of the Ad Hoc Committee (see A/AC.254/L.33), was redrafted following a preliminary discussion at the fifth session of the Ad Hoc Committee. It would require further examination.

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 14
"Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance [, within the conditions prescribed by the domestic legislation] in investigations, prosecutions and judicial proceedings in relation to the crimes or offences covered by this Convention, as provided for in article 2, paragraph 1.

"[2. Without prejudice to the other limitations to the obligation to assist set forth in this article, mutual legal assistance also shall be afforded where the requesting State Party is investigating a serious crime and suspects the involvement of an organized criminal group.]

"[3. Each State Party shall, to the fullest extent possible under its relevant laws, treaties and arrangements, provide prompt and effective cooperation to another Party for proceedings brought by a State Party against a legal person under article 5 of this Convention.]

"[4. No State Party shall be entitled to undertake, in the territorial jurisdiction of any other State Party, the performance or discharge of any functions for which the jurisdiction or competence is reserved exclusively for the authorities of that other Party under its domestic laws or regulations.]

"5. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:

"*(a)* Taking evidence or statements from persons;

"*(b)* Effecting service of judicial documents;

"*(c)* Executing searches, [freezing] and seizures;

"[*(d)* Seizing, confiscating and surrendering property;]

"*(e)* Examining objects and sites;

"*(f)* Providing information, evidentiary items [and expert evaluations];

"*(g)* Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

"*(h)* Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

"*(i)* Facilitating the appearance of persons in the requesting State Party;

"[*(j)* Locating or identifying persons or objects;]

"*(k)* Any other type of assistance allowed by the law of the requested [or requesting] State Party.

"6. Without prejudice to national law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by that authority pursuant to this Convention.

"7. The transmission of such information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use.

"8. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

"9. Paragraphs 11 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 11 to 29 in lieu thereof.

"10. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

"11. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.

"12. States Parties shall [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or to assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree. Transfer under this paragraph shall not be for the purpose of standing trial. For the purposes of this paragraph:

"*(a)* The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

"*(b)* The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit] or as otherwise agreed by the competent authorities of both States;

"*(c)* The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

"*(d)* The person transferred shall receive credit for service of the sentence imposed in the State from which he or she was transferred for time served in the custody of the State to which he or she was transferred.

"13. States Parties shall designate a central authority or, when necessary, central authorities that shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. Central authorities shall play an active role in ensuring the speedy execution of requests [, controlling quality and setting priorities]. The Secretary-General of the United Nations shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to

require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the Parties agree, through the International Criminal Police Organization, if possible.

"14. Requests shall be made in writing or, where possible, by any means capable of producing a written record in a language acceptable to the requested State Party, under conditions allowing that Party to establish authenticity. The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

"15. A request for mutual legal assistance shall contain:

"*(a)* The identity of the authority making the request;

"*(b)* The subject matter and nature of the investigation, prosecution or proceeding to which the request relates and the name and the functions of the authority conducting the investigation, prosecution or proceeding;

"*(c)* A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

"*(d)* A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

"*(e)* Where possible, the identity, location and nationality of any person concerned;

"*(f)* The purpose for which the evidence, information or action is sought.

"16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

"17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

"18. Wherever possible and consistent with fundamental principles of domestic law, a State Party shall permit [encourage] testimony, statements or other forms of assistance to be given via video link or other modern means of communication and, subject to domestic law, shall ensure that perjury committed under such circumstances is a criminal offence.

"19. The requesting State Party, if so requested by the requested State, shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall preclude the requesting Party from, in its proceedings, disclosing information or evidence that is exculpatory to an accused person.

"20. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

"21. Mutual legal assistance may be refused:

"*(a)* If the request is not made in conformity with the provisions of this article;

"*(b)* If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

"*(c)* If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

"*(d)* If it would be contrary to the fundamental principles of the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;

"*(e)* If the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality or political opinions;

"*(f)* If the request relates to an offence that is considered by the requested State Party to be a political offence;

"*(g)* If the request falls under paragraph [2] of this article and the requested State Party considers, based on the information provided by the requesting State Party, [that there is no basis for the suspicion of the involvement of an organized criminal group in the offence] [that the suspicion is unreasonable].

"22. For the purpose of cooperation under this article, the offences established in articles [...] of this Convention shall not be considered fiscal [or customs] offences, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.

"23. Reasons shall be given for any refusal of mutual legal assistance.

"[24. If, within six months of the submission of its request, the requesting State Party has not received any information on action taken pursuant to that request, the requesting Party may petition the requested State Party in this regard. The requested Party shall inform the requesting Party about the reason for the lack of any communication regarding the request.]

"25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding.

"26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.

"27. A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or

her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting Party or, having left it, has returned of his or her own free will.

"28. The authorities of the requested State Party may request to be present in proceedings conducted in the territory of the requesting State Party.

"29. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

"30. The requested State Party:

"*(a)* Shall provide copies of government records, documents or information in its possession that, under its laws, are available to the general public;

"*(b)* May, at its discretion, provide in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its laws are not available to the general public.

"31. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Canada (A/AC.254/L.218)

Paragraph 13

Canada proposed to replace the first four sentences of paragraph 13 with the following text:

"States Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that territory or region. Central authorities shall play an active role in ensuring the speedy execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties."

Recommendation of an informal working group on article 14, paragraph 2 (A/AC.254/L.220)

It was proposed to replace paragraph 2 with the following:

"2. Without prejudice to the application of paragraph 21 *(g)* of this article, in which the involvement of an organized criminal group is being considered solely for the purpose of determining if this article applies, it shall be sufficient for the requesting State Party to provide an indication that an organized criminal group may be involved in the offence in relation to which assistance is sought."

France (A/AC.254/L.221)

Paragraph 3

France proposed to amend paragraph 3 to read:

"3. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties and arrangements with respect to investigations, prosecutions and judicial proceedings relating to the offences for which a legal person may be held liable under article 5 of this Convention in the requesting State."

Recommendation of an informal working group on article 14, paragraph 7 (A/AC.254/L.222)

Paragraph 7

It was proposed to add the following sentence at the end of paragraph 7: "However, this shall not prevent the receiving Party from disclosing in its proceedings information that is exculpatory to an accused person."

The working group also recommended that two additional concerns be addressed in the travaux préparatoires. This could be done by wording to the following effect:

(a) When a State Party is considering whether to spontaneously provide information of a particularly sensitive nature or is considering placing strict restrictions on the use of information thus provided, it is considered advisable for the State Party concerned to consult with the potential receiving State beforehand;

(b) When a State Party that receives information under this provision already has similar information in its possession, it is not obliged to comply with any restrictions imposed by the transmitting State.

Recommendation of an informal working group on article 14, paragraphs 1 and 2 (A/AC.254/L.233)

Paragraphs 1 and 2

It was proposed to replace paragraphs 1 and 2 with the following:

"1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the

offences covered by this Convention as provided for in article 2 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 2, paragraph 1 *(a)* or *(b)*, is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group."

Notes by the Secretariat

3. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 14, as amended. The above-mentioned proposals were taken into consideration in the final text, in which the following amendments were also reflected. Former paragraphs 5 *(d)* and *(j)* (inserted in square brackets) were deleted. The reference to the law of the requesting State party in former paragraph 5 *(k)* was also deleted. In former paragraph 7, additional text was added, further to the text proposed by the informal working group (see A/AC.254/L.222), to cover cases of disclosing information that is exculpatory to an accused person. Additional text was also added to former paragraph 9 (encouragement to apply paragraphs 11 to 29 of the draft convention if they facilitate cooperation). Former paragraph 11 was redrafted and its final form basically reflects the proposal submitted by China (see footnote 46) and further comments submitted by the Russian Federation and Singapore. Former paragraph 12 on the transfer of detained persons or persons serving a sentence to give evidence abroad was also restructured and a paragraph on safe conduct was added as a new paragraph 12. Paragraph 18 on testimony via video conference was restructured on the basis of text (paragraph 1) included in the proposal submitted by Italy (see footnote 62). In paragraph 19, the phrase "if so requested by the requested State" was deleted (proposal submitted by China). Further text was added to cover cases of disclosing information that is exculpatory to an accused person (see also the similar addition in former paragraph 7). For paragraphs 21 *(e)* and *(f)*, see the interpretative notes below. Paragraph 21 *(g)* was deleted. Paragraph 22 on fiscal offences was restructured on the basis of a proposal submitted by Switzerland, as amended in the light of article 13 of the International Convention for the Suppression of the Financing of Terrorism. Paragraph 24 was replaced by new text on prompt execution of mutual legal assistance requests within the deadlines suggested by the requesting State (based on a proposal submitted by Italy, contained in document A/AC.254/5/Add.23). In paragraph 27, a clause was inserted so that this provision does not affect the application of the safe conduct provision that was added in the final text as new paragraph 12. Former paragraph 28 was deleted in view of the concerns expressed by delegations and on the understanding that the presence of the authorities of the requested State party in proceedings conducted in the territory of the requesting State party would be subject to bilateral agreements or arrangements. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

4. Following the adoption of the report of the Ad Hoc Committee on its tenth session, Lebanon requested that the report should reflect the reservations expressed by Lebanon regarding article 14, paragraph 8.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 18
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 *(a)* or *(b)*, is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have

the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior con-

sent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or

her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

C. Interpretative notes

The interpretative notes on article 18 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 36-43) are as follows:

Paragraph 2

(a) The term "judicial proceedings" in article 18, paragraph 2, refers to the matter for which mutual legal assistance is requested and is not intended to be perceived as in any way prejudicing the independence of the judiciary.

Paragraph 5

(b) When a State party is considering whether to spontaneously provide information of a particularly sensitive nature or is considering placing strict restrictions on the use of information thus provided, it is considered advisable for the State party concerned to consult with the potential receiving State beforehand. When a State party that receives information under this provision already has similar information in its possession, it is not obliged to comply with any restrictions imposed by the transmitting State.

Paragraph 8

(c) This paragraph is not inconsistent with paragraphs 17 and 21 of this article.

Paragraph 10 (b)

(d) Among the conditions to be determined by States parties for the transfer of a person, States parties may agree that the requested State party may be present at witness testimony conducted in the territory of the requesting State party.

Paragraph 13

(e) A central authority may be different at different stages of the proceedings for which mutual legal assistance is requested. This paragraph is not intended to create an impediment to countries having a central authority as regards receiving requests or a different central authority as regards making requests.

Paragraph 18

(f) Italy made a proposal on the matter covered by this paragraph (see A/AC.254/5/Add.23). During the debate on the proposal, it was pointed out that the following part of it, not reflected in the text of the convention, could be used by States parties as guidelines for the implementation of article 18, paragraph 18:

> "*(a)* The judicial authority of the requested State party shall be responsible for the identification of the person to be heard and shall, on conclusion of the hearing, draw up minutes indicating the date and place of the hearing and any oath taken. The hearing shall be conducted without any physical or mental pressure on the person questioned;
>
> "*(b)* If the judicial authority of the requested State considers that during the hearing the fundamental principles of the law of that State are infringed, he or she has the authority to interrupt or, if possible, to take the necessary measures to continue the hearing in accordance with those principles;
>
> "*(c)* The person to be heard and the judicial authority of the requested State shall be assisted by an interpreter as necessary;
>
> "*(d)* The person to be heard may claim the right not to testify as provided for by the domestic law of the requested State or of the requesting State; the domestic law of the requested State applies to perjury;
>
> "*(e)* All the costs of the video conference shall be borne by the requesting State party, which may also provide as necessary for technical equipment."

Paragraph 21 (d)

(g) The provision of paragraph 21 *(d)* of this article is not intended to encourage refusal of mutual assistance for any reason, but is understood as raising the threshold to more essential principles of domestic law of the requested State. The proposed clauses on grounds for refusal relating to the prosecution or punishment of a person on account of that person's sex, race, religion, nationality or political opinions, as well as the political offence exception, were deleted because it was understood that they were sufficiently covered by the words "essential interests" in paragraph 21 *(b)*.

Paragraph 28

(h) Many of the costs arising in connection with compliance with requests under article 18, paragraphs 10, 11 and 18, would generally be considered extraordinary in nature. Developing countries may encounter difficulties in meeting even some ordinary costs and should be provided with appropriate assistance to enable them to meet the requirements of this article.

Article 19. Joint investigations

A. Negotiation texts

Fifth session: 4-15 October 1999

Rolling text (A/AC.254/4/Rev.5)

"Article 14 bis
"Joint investigations[1, 2]

"On a reciprocal basis, States Parties shall consider concluding bilateral or multilateral agreements or understandings whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the judicial authorities concerned may, where necessary together with police authorities, after informing the central authority or authorities referred to in paragraph 8 of article 14, act together within joint investigative bodies. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis."

Ninth session: 5-16 June 2000

Notes by the Secretariat

1. The version of article 14 bis contained in document A/AC.254/4/Rev.5 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.6-8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 14 bis
"Joint investigations

"States Parties shall consider concluding bilateral or multilateral agreements or understandings of a reciprocal nature whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the judicial authorities concerned

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[1]The text of this article was based on a proposal submitted by Italy at the fourth session of the Ad Hoc Committee (28 June-9 July 1999) in the context of the discussion on article 14 of the draft convention (Mutual legal assistance)(see A/AC.254/5/Add.8).

[2]The issue of whether to include a separate article on joint investigations or deal with this matter in the context of article 19, paragraph 2 *(c)* of the draft convention was to be considered. At the fifth session of the Ad Hoc Committee, Italy undertook to consider the presentation of a possible reformulation of article 14 bis at a subsequent session. The reformulation could include the following sentence: "The States Parties involved shall ensure that the sovereignty of the State Party in whose territory the investigation is to take place is fully respected" (see the reformulated proposal submitted by Italy at the eighth session of the Ad Hoc Committee in document A/AC.254/L.154, supported, inter alia, by Azerbaijan (see A/AC.254/L.199)).

may, where necessary together with police authorities, after informing the central authority or authorities referred to in paragraph 13 of article 14, act together within joint investigative bodies. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by case basis."

Notes by the Secretariat

2. At its tenth session, the Ad Hoc Committee decided that joint investigations should be dealt with in a separate article of the convention and that, consequently, paragraph 2 *(c)* of article 19 should be deleted (see note 3 by the Secretariat concerning article 27 of the convention). In view of that decision, article 14 bis was considered, finalized and approved, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 19
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20. Special investigative techniques

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 15
"Special investigative techniques

"1. If permitted by the basic principles of their respective domestic legal systems, States Parties shall take the necessary measures to provide a legal basis for the use of special investigative techniques, such as controlled delivery, surveillance, including electronic surveillance, and undercover operations,[1] for the purpose of gathering evidence and taking legal action against persons involved in an offence established in article(s) [...] [alternatively: in an offence covered by this Convention].

"2. States Parties shall consider extending the use of the special investigative techniques referred to in paragraph 1 at the international level, on the basis of agreements or arrangements.

"3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

"4. Decisions to use controlled delivery at the international level may include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part."

Rolling text (A/AC.254/4/Rev.1)

"Article 15
"Special investigative techniques

1. If permitted by the basic principles of their respective domestic legal systems,[2] States Parties shall take the necessary measures [, within their possibilities,]

[1]A suggestion was made to include definitions of "electronic surveillance" and "undercover operations".

[2]This formulation, as used also in the United Nations Convention against Illicit Traffic in Narcotic Drugs of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627), was supported by several delegations. Some delegations proposed the alternative formulation of "If permitted by domestic law, ...". In general, on the applicability of the language of the 1988 Convention to the drafting of the present article, one delegation cautioned that article 11 of the 1988 Convention focused on the use of one special investigative technique, controlled delivery, at the international level, while the present article examined the use of special investigative techniques at both the national level and the international level.

to provide a legal basis for[3] the [appropriate] use of special investigative techniques, such as controlled delivery, surveillance, including electronic surveillance, and undercover operations for the purpose of gathering evidence and taking legal action against persons involved in an offence established in article(s) [...] [*alternatively:* in an offence covered by this convention].[4]

2. States Parties shall consider extending the use of the special investigative techniques referred to in paragraph 1 of this article at the international level, on the basis of agreements or arrangements.

[2 bis. States Parties participating in this type of investigation at the international level shall scrupulously respect the terms of reference agreed upon with the competent authorities of the States Parties in which these activities are carried out and shall fully respect the sovereignty of such States.][5]

3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.[6]

4. Decisions to use controlled delivery at the international level may include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part.

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. The version of article 15 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-4).

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[3]Some delegations proposed that "to provide a legal basis for" should be amended to read "to allow for the appropriate use of". One delegation proposed that "to provide a legal basis for" should be amended to read "to provide a lawful basis for".

[4]Several delegations noted the need to define these concepts. It was also suggested by some delegations that since the list of measures in this paragraph was not exhaustive and new investigative measures might be developed in response to the evolution of organized crime and of technology, the definitions might also be inserted into the *travaux préparatoires.* One delegation proposed the addition of "interception of electronic messages" as a special investigatory technique. However, several delegations noted that not only was that issue evolving rapidly, but it was also particularly complex and sensitive and therefore should perhaps not be dealt with in the context of the convention. Several delegations emphasized the possible need for providing technical assistance to developing countries to support the use of special investigative techniques, as noted in article 21, subparagraph 1 *(g)* of the draft convention contained in document A/AC.254/4/Rev.4. Some delegations suggested that a provision on technical cooperation should be inserted in the present article.

[5]This paragraph was submitted by Mexico and was not discussed by the Ad Hoc Committee at its first session.

[6]One delegation emphasized the need to respect the territorial integrity and sovereignty of States parties. One delegation proposed that the present provision should specify, in the same manner as article 14, paragraph 21, the presumptive allocation of the financial burden resulting from the use of special investigative measures at the international level.

Rolling text (A/AC.254/4/Rev.5)

"Article 15
"Special investigative techniques

"1. Each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of special investigative techniques, in particular controlled delivery, electronic or other forms of surveillance, and undercover operations, [by its competent authorities in its territory] for the purpose of effectively combating organized crime.[7]

"2. For the purpose of investigating the crimes [covered by this Convention] [established in articles [...] of this Convention], States Parties are encouraged to make, when necessary, appropriate bilateral or multilateral arrangements for using such special investigative techniques in the context of cooperation at the international level. Such arrangements shall be agreed upon and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the agreed terms of those arrangements.[8]

"3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

"4. Decisions to use controlled delivery at the international level may [, with the consent of the States Parties concerned,][9] include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part."

Notes by the Secretariat

2. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 15, as amended following discussions among the delegations concerning whether paragraph 1 was or was not mandatory. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

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[7]The text of this paragraph was proposed by an informal group convened at the request of the Chairman at the fifth session of the Ad Hoc Committee (see A/AC.254/L.92). One delegation noted that the proposal should be flexible, permit States to take the measures necessary for the use of such techniques and encourage States to implement them without placing them under an obligation to do so. One delegation was of the view that if this provision were to impose an obligation, the words "in particular" should be deleted, so that the obligation would not be left undefined or open-ended. Some delegations were of the view that the formulation could be more binding and/or compelling. One delegation suggested reverting to the original proposal (see A/AC.254/4/Rev.4) and retaining the phrase "for the purpose of gathering evidence and taking legal action against persons involved".

[8]Text proposed at the fifth session of the Ad Hoc Committee by China and Mexico, at the request of the Chairman, to consolidate paragraphs 2 and 2 bis previously contained in article 15 (see A/AC.254/4/Rev.1). Consideration should be given to eliminating specific references throughout the text to "sovereign equality", which duplicate the provision on this subject contained in article 2, paragraph 3, and apply generally to obligations under the convention.

[9]The words in brackets, used in the corresponding article in the 1988 Convention (article 11, paragraph 3), had been inadvertently deleted from the text of the previous drafts of the convention.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 20
Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

C. Interpretative note

The interpretative note on article 20 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 44) is as follows:

Paragraph 1

This paragraph does not imply an obligation on States parties to make provisions for the use of all the forms of special investigative technique noted.

Article 21. Transfer of criminal proceedings

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 16
"Transfer of proceedings

"States Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of an offence established in article(s) [...] [*alternatively:* of an offence covered by this Convention] in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where more jurisdictions are involved, with a view to concentrating the prosecution.

Notes by the Secretariat

1. At the informal preparatory meeting held in Buenos Aires in 1998, some delegations felt that the subject matter of this article could be best treated under paragraph 5 of article 9, on jurisdiction, or in connection with article 10, paragraph 9, as amended by the Ad Hoc Committee at its first session, regarding domestic prosecution in lieu of extradition of nationals.

2. Irrespective of the placement of this provision, there was general consensus on its content, which was therefore not modified throughout the sessions of the Ad Hoc Committee. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 16, as amended in its title (see the final text of the convention, as included in the report of the Ad Hoc Committee (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 21
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22. Establishment of criminal record

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 17
"Recognition of foreign judgements

"Each State Party shall take legislative measures to recognize, in their domestic law, the previous foreign conviction for an offence established in article(s) [...] [*alternatively:* for an offence covered by this Convention] for the purpose of establishing the criminal history of the alleged offender."

Rolling text (A/AC.254/4/Rev.1)

"Article 17
"[Establishment of criminal record][1]

"Each State Party [may] take legislative measures to [take into consideration] the previous foreign conviction[2] for an offence established in article(s) [...] [*alternatively:* for an offence covered by this Convention] for the purpose of establishing the criminal history of the alleged offender."

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[1]This article was the subject of extensive discussion at the first session of the Ad Hoc Committee. While it was agreed that, for purposes of investigation, prosecution and adjudication, information on the criminal history of a suspect or defendant might be requested, there were difficulties in the formal recognition of foreign judgements. No support was voiced at the first session of the Ad Hoc Committee for the possibility of taking foreign convictions into account in subsequent sentencing proceedings, although there had been support for that idea at the informal preparatory meeting held in Buenos Aires in 1998. One delegation noted the need for a safeguard clause, or the insertion of a phrase such as "in accordance with domestic law". In connection with this article, three possible solutions were envisaged by some delegations: *(a)* on the basis of article 18 bis, on measures to enhance cooperation with law enforcement authorities, information could be exchanged on criminal history; *(b)* on the basis of article 14, on mutual legal assistance, States could undertake to respond to requests related to prior convictions of an individual; and *(c)* the article could be redrafted in a more discretionary manner to read "Each State Party may adopt ..." (as in the present draft). Several delegations proposed that the article should be deleted.

[2]Several delegations noted the need to define the concept of "convictions". One delegation raised the issue of convictions in absentia and noted that different legal systems imposed a variety of sanctions through different procedures. One delegation noted that the provision should specify whether the convictions in question should be legally final or should include convictions that were still subject to appeal. Two delegations proposed that information on the criminal history of the alleged offender should include acquittals. One delegation proposed that provisions should be included in the convention on the exchange of information on criminal, civil and administrative sanctions imposed against corporate bodies or their officers. One delegation noted that consideration should be given to including provisions on how information on criminal history should be obtained from other Member States.

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. The version of article 17 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-4).

Rolling text (A/AC.254/4/Rev.5)

"Article 17
"Establishment of criminal record

"Each State Party may take such legislative or other measures as may be necessary to take into consideration, under such terms as it deems appropriate, the previous foreign conviction of an alleged offender in another country for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention to seek enhanced punishment or to establish the criminal history of such offender or for any other purpose that the State Party deems appropriate."

Seventh session: 17-28 January 2000

Notes by the Secretariat

2. Delegations based their comments on the text of article 17 of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

Rolling text (A/AC.254/4/Rev.7)

"Article 17[3]
"Establishment of criminal record

"Each State Party may take such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction of an alleged offender in another country for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention."

[3]The text of this article was provisionally approved at the informal consultations held during the seventh session of the Ad Hoc Committee and was recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

Notes by the Secretariat

3. At its eighth session, the Ad Hoc Committee approved article 17 without amendment (see A/AC.254/28, para. 11). At its tenth session, the Ad Hoc Committee considered, finalized and approved the article, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 22
Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

C. Interpretative note

The interpretative note on article 22 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 45) is as follows:

The term "conviction" should be understood to refer to a conviction no longer subject to any appeal.

Article 23. Criminalization of obstruction of justice

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Rev.4)

"[Article 17 bis
"Bribery of witnesses and intimidation of witnesses and officials

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally [and involving an organized criminal group]:

"*(a)* The offering or giving to a person of an undue advantage in order to interfere with the giving of testimony or production of evidence in relation to the commission of a serious crime;

"*(b)* The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or security official or with the giving of testimony or production of evidence in relation to the commission of a serious crime.]"[1]

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 17 bis of the revised draft convention contained in document A/AC.254/4/Rev.5, which was the same as that contained in document A/AC.254/4/Rev.4.

[1]This text of article 17 bis was produced at the fourth session of the Ad Hoc Committee (see A/AC.254/L.40) as the result of a consolidation of the text contained in documents A/AC.254/L.28 and A/AC.254/L.29, in connection with the discussion on article 4 ter, on measures against corruption (see note 3 by the Secretariat concerning article 8 of the convention). The text was not discussed in detail at the fourth session of the Ad Hoc Committee.

Rolling text (A/AC.254/4/Rev.6)

"Article 17 bis
"Obstruction of justice

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally [and involving an organized criminal group]:

"*(a)* The use of physical force, threats, intimidation or the promise, offering or giving of an undue advantage[2] to induce false testimony or to interfere in the giving of testimony or production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

"*(b)* The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in a proceeding in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials."[3, 4]

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Rev.7)

"Article 17 bis[5]
"Criminalization of obstruction of justice

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally [and involving an organized criminal group]:

"*(a)* The use of physical force, threats, intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

"*(b)* The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials."

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[2]The formulation is intended to bring article 17 bis in line with article 4 ter.

[3]At the sixth session of the Ad Hoc Committee, there were doubts as to whether it would be appropriate to establish an obligation to criminalize the attempt to commit the conduct described in subparagraphs *(a)* and *(b)*. Some delegations pointed out that this would create difficulties at least with respect to subparagraph *(b)*.

[4]Germany proposed a new wording for article 17 bis to establish as a criminal offence "suborning or attempting to suborn another person to give false (sworn or unsworn) testimony". Germany also expressed doubts as to whether subparagraph *(b)* was really necessary since the behaviour foreseen in that subparagraph was probably an offence in any country and therefore proposed that the provision should be deleted (A/AC.254/L.124).

[5]The text of this article was provisionally approved during the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Rev.8)

"Article 17 bis
"Criminalization of obstruction of justice

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:[6]

"*(a)* The use of physical force, threats, intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding[7] in relation to the commission of offences covered by this Convention;[8]

"*(b)* The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials."

Notes by the Secretariat

2. At its eighth session, the Ad Hoc Committee considered, finalized and approved article 17 bis, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 23
Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

[6]At its eighth session, the Ad Hoc Committee provisionally approved article 17 bis and decided that the question of whether to include, at the end of this paragraph, the words "and involving an organized criminal group" would remain under review, pending the consideration of article 2 of the convention (see also A/AC.254/28, para. 12).

[7]The term "proceeding" is intended to cover all official governmental proceedings, which may include the pre-trial stage of a case (see the interpretative notes concerning this article below).

[8]It was not intended to cover cases where a person had the right not to give evidence and an undue advantage was provided for the exercise of that right (see the interpretative notes in section C below).

C. Interpretative notes

The interpretative notes on article 23 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 46 and 47) are as follows:

Subparagraph (a)

(a) The term "proceeding" is intended to cover all official governmental proceedings, which may include the pre-trial stage of a case.

(b) It was understood that some countries may not cover cases where a person has the right not to give evidence and an undue advantage is provided for the exercise of that right.

Article 24. Protection of witnesses

Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 18
"Protection of witnesses and victims

"1. Each State Party shall adopt measures to provide effective and appropriate protection from potential retaliation or intimidation for witnesses in its criminal proceedings who agree to give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.[1]

"2. The measures envisaged in paragraph 1 include:[2]

"*(a)* Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and to permit, where appropriate, non-disclosure or limitations on disclosure of information concerning the identity and whereabouts of such persons;

"*(b)* Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology or other means in a manner not prejudicial to the rights of the defence.[3]

"3. States Parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1.

"4. States Parties shall take measures to provide assistance to victims of crimes covered by this Convention, enable views and concerns of victims 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, and establish procedures relating to restitution by offenders to victims of such crimes."

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[1]This term was intended to cover persons who might be subject to danger by virtue of a particularly close relationship with the witness, but who were not relatives.

[2]Depending on the final wording of this paragraph, some of the measures set forth could be optional rather than required.

[3]One delegation expressed the view that the text should make clear that these measures needed to be consistent with the right of the defence to cross-examination.

Rolling text (A/AC.254/4/Rev.1)

"Article 18
"Protection of witnesses and victims

"1. Each State Party shall[4] adopt measures to provide effective and appropriate protection from potential retaliation or intimidation for witnesses in its criminal proceedings[5] who agree to give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.[6]

"2. The measures envisaged in paragraph 1 [may] include [, among others,] [, without affecting the right of the defendant to due process]:[7]

"*(a)* Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and to permit, where appropriate, non-disclosure or limitations on disclosure of information concerning the identity and whereabouts of such persons;[8]

"*(b)* Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology[9] or other means in a manner not prejudicial to the rights of the defence.

"3. States Parties [may] consider entering into arrangements with other States for the relocation of persons described in paragraph 1.

"4. States Parties shall take measures to provide assistance to victims[10] of crimes covered by this Convention, enable views and concerns of victims 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, and establish procedures relating to restitution by offenders to victims of such crimes."

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. The version of article 18 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-4).

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[4]Several delegations noted that the use of the categorical "shall" in this paragraph was inappropriate, as the provision of full protection might be practically and financially impossible.

[5]Several delegations noted that the protection should be provided before, during and after the criminal proceedings. One delegation noted that the protection should extend to victims and witnesses involved in proceedings in other States.

[6]As indicated above, this term was intended to cover persons who might be subject to danger by virtue of a particularly close relationship with the witness, but who were not relatives. One delegation noted that the term required clarification. Several delegations proposed that the scope of this article should be expanded to include not only all persons assisting the authorities in investigation, prosecution and adjudication, but also criminal justice personnel and, for example, the representatives and legal counsel of the victim.

[7]Several delegations noted that some of the measures noted in this paragraph might be in conflict with legal safeguards protecting the defendant. It was also noted that the differences between legal systems should be reflected in the drafting of this paragraph.

[8]Some delegations noted that this might run counter to legal safeguards enjoyed by the defendant.

[9]One delegation suggested that this concept should be clarified, in particular if measures in addition to video links were encompassed. One delegation proposed that the term should be deleted.

[10]Several delegations suggested that issues related to restitution to victims and victim assistance should be dealt with in a separate article. One delegation proposed that this separate article could deal in general with human rights issues. Some delegations noted that the terms "assistance", "views and concerns" and "restitution" were ambiguous. Two delegations requested that specific reference should be made of the victim categories of minors, migrants and refugees.

Rolling text (A/AC.254/4/Rev.5)

"Article 18
"Protection of witnesses and victims

"1. Each State Party shall adopt appropriate measures [within its means] to provide effective protection from potential retaliation or intimidation for witnesses in its criminal proceedings who agree to give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.

"2. The measures envisaged in paragraph 1 of this article may include, among other things, without prejudice to the rights of the defendant, including the right to due process:

"*(a)* Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

"*(b)* Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

"3. States Parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1 of this article."[11]

Seventh session: 17-28 January 2000

Notes by the Secretariat

2. Delegations based their comments on the text of article 18 of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

Rolling text (A/AC.254/4/Rev.7)

"Article 18[12]
"Protection of witnesses

"1. Each State Party shall adopt appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in its criminal proceedings who give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.

[11]Former paragraph 4 was replaced by a new article 18 bis, the text of which was proposed by the Chairman of the Ad Hoc Committee at its fifth session.

[12]The text of this article was provisionally approved at the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

"2. The measures envisaged in paragraph 1 of this article may include, among other things, without prejudice to the rights of the defendant, including the right to due process:

"*(a)* Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

"*(b)* Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

"3. States Parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1 of this article.

"4. The provisions of this article shall apply also to victims insofar as they are witnesses."

Notes by the Secretariat

3. At its eighth session, the Ad Hoc Committee approved article 18 without amendment (see A/AC.254/28, para. 11). At its tenth session, the Ad Hoc Committee considered, finalized and approved the article, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 24
Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25. Assistance to and protection of victims

A. Negotiation texts

Fifth session: 4-15 October 1999

Rolling text (A/AC.254/4/Rev.5)

"Article 18 bis
"Protection of victims[1]

"1. States Parties shall take [appropriate] measures [within their means] to provide assistance to victims of offences covered by this Convention.

"2. States Parties shall establish procedures to provide access to appropriate compensation for victims of offences covered by this Convention.

"3. States Parties shall, subject to their domestic laws, enable views and concerns of victims 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.

"4. The provisions of article 18 of this Convention shall apply also to victims in so far as they are witnesses."

Seventh session: 17-28 January 2000

Notes by the Secretariat

1. Delegations based their comments on the text of article 18 bis of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

[1]The text of this article, which replaces former paragraph 4 of article 18, was proposed by the Chairman of the Ad Hoc Committee at its fifth session and was accepted as the basis for further work.

[2]The text of this article was provisionally approved at the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

Rolling text (A/AC.254/4/Rev.7)

"Article 18 bis[2]
"Assistance to and protection of victims

"1. States Parties shall take appropriate measures within their means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

"2. States Parties shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

"3. States Parties shall, subject to their domestic laws, enable views and concerns of victims 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."

Notes by the Secretariat

2. At its eighth session, the Ad Hoc Committee approved article 18 bis without amendment (see A/AC.254/28, para. 11). At its tenth session, the Ad Hoc Committee considered, finalized and approved the article, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 25
Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

C. Interpretative note

The interpretative note on article 25 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 48) is as follows:

While the purpose of this article is to concentrate on the physical protection of victims, the Ad Hoc Committee was cognizant of the need for protection of the rights of individuals as accorded under applicable international law.

Notes by the Secretariat

3. It should be mentioned that the interpretative note had initially ended with the phrase "also in the context of the provision of article 24, paragraph 1, of the Convention" (see A/AC.254/33, para. 26). That provision was deleted at the tenth session of the Ad Hoc Committee, and the aforementioned phrase was accordingly not included in the final version of the interpretative note.

Article 26. Measures to enhance cooperation with law enforcement authorities

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 18 bis
"Measures to enhance cooperation with law enforcement authorities

"1. States Parties shall promote appropriate methods of obtaining information and testimony from persons who are willing to cooperate in the investigation and prosecution of an offence established in article(s) [...] [*alternatively:* of an offence covered by this Convention] and shall, as appropriate, assist each other in promoting such cooperation.

"2. In particular, each State Party shall [ensure] [consider the possibility of ensuring] that its domestic legal framework permits the possibility, in appropriate cases, that either:

"*(a)* Immunity from prosecution may be granted to a person who provides substantial cooperation with law enforcement authorities in the investigation and prosecution of an offence established in article(s) [...] [*alternatively:* of an offence covered by this Convention]; or

"*(b)* Substantial cooperation provided by an accused person in the investigation and prosecution of an offence established in article(s) [...] [*alternatively:* of an offence covered by this Convention] may be considered a mitigating factor in determining the person's punishment.

"3. Protection of such persons shall be as provided for in article 18.

"4. In principle, the benefit of immunity granted to a state witness shall have effect only in the State Party that granted such immunity. If a second State Party acquires the testimony given by a state witness, such testimony may be used against persons other than the person so cooperating. The State utilizing such testimony shall be required to grant the benefit of immunity to the state witness and may consequently not use such testimony or any evidence directly resulting therefrom against such person. Two or more States may jointly grant benefits of immunity when a transnational organization is under investigation.[1]

[1]Paragraphs 4 and 5, on cooperation with law enforcement authorities, were not discussed at the informal preparatory meeting held in Buenos Aires in 1998.

"5. A State Party may grant benefits to state witnesses in respect of offences committed in the territory of another State Party, and the cooperation of state witnesses may be evaluated with a view to granting them immunity or reduced penalties in conformity with the laws of the first-mentioned State. When a state witness is required to testify before the court of another country, States shall facilitate his or her transfer to the State requiring such testimony. This privilege shall override the claim of a third State to impose punishment.

Rolling text (A/AC.254/4/Rev.1)

"Article 18 bis
"Measures to enhance cooperation with law enforcement authorities

"1. States Parties shall promote appropriate[2] methods of obtaining information and testimony from persons who are willing to cooperate in the investigation and prosecution of an offence established in article(s) [...] [*alternatively:* of an offence covered by this Convention] and shall, as appropriate, assist each other in promoting such cooperation.

"2. Each State Party shall [consider the possibility of providing, in accordance with fundamental legal principles, its prosecutorial and judicial authorities with discretion in order to encourage the cooperation referred to in paragraph 1 of this article, for example by providing] [provide for] the possibility, in appropriate cases, of [either or both of the following]:[3]

"*(a)* Granting immunity from prosecution to a person who cooperates substantially with law enforcement authorities in the investigation and prosecution of an offence established in article(s) [...] [*alternatively:* of an offence covered by this Convention];[4]

"*(b)* Considering the provision by an accused person of substantial cooperation in the investigation and prosecution of an offence established in article(s) [...] [*alternatively:* of an offence covered by this Convention] as a mitigating factor in determining the person's punishment.

"3. Protection of such persons shall be as provided for in article 18.

"Option 1[5]

"4. States Parties shall consider entering into arrangements, subject to their national laws, concerning immunities on non-prosecution or reduced penalties in

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[2]One delegation noted that this paragraph, in particular the use of the word "appropriate", required clarification.

[3]One delegation proposed that subparagraphs *(a)* and *(b)* of this paragraph should be made facultative, by beginning the paragraph with "In particular, each State Party shall, in accordance with fundamental legal principles, [ensure] [consider the possibility of ensuring] that its domestic legal framework permits the possibility, in appropriate cases, of ..." One delegation proposed that this paragraph should be reformulated as a listing of various measures designed to promote cooperation with law enforcement, including not only the immunity referred to in subparagraph *(a)* and the mitigation referred to in subparagraph *(b),* but also the offering of rewards for cooperation and the offering of victim protection arrangements.

[4]Several delegations noted that their legal system did not allow for the possibility of granting immunity and some called for the deletion of this subparagraph. One delegation noted the dangers to the course of justice that might arise if the authorities had discretionary powers to grant immunity. One delegation noted that the scope of immunity required clarification in respect of whether it included only the offence under investigation, or any offence committed by the person in question. In either case, according to the delegation, this might have an impact on the rights of the victim.

[5]Option 1 represented an effort to capture the comments of some delegations at the first session of the Ad Hoc Committee. Other delegations were of the view that the paragraph was not necessary and should be deleted.

respect of witnesses [from] [resident in] one State whose testimony is required in another State.

"Option 2[6]

"4. In principle, the benefit of immunity granted to a state witness shall have effect only in the State Party that granted such immunity. If a second State Party acquires the testimony given by a state witness, such testimony may be used against persons other than the person so cooperating. The State utilizing such testimony shall be required to grant the benefit of immunity to the state witness and may consequently not use such testimony or any evidence directly resulting therefrom against such person. Two or more States may jointly grant benefits of immunity when a transnational [criminal] organization is under investigation.

"5. A State Party may grant benefits to state witnesses in respect of offences committed in the territory of another State Party, and the cooperation of state witnesses[7] may be evaluated with a view to granting them immunity or reduced penalties in conformity with the laws of the first-mentioned State. When a state witness is required to testify before the court of another country, States shall facilitate his or her transfer to the State requiring such testimony. This privilege shall override the claim of a third State to impose punishment."

Fifth session: 4-15 October 1999

Note by the Secretariat

1. The version of article 18 bis contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-4).

Rolling text (A/AC.254/4/Rev.5)

"Article 18 ter
"Measures to enhance cooperation with law enforcement authorities

"1. States Parties shall encourage [shall take appropriate measures to encourage] persons who participate or who have participated in criminal organizations covered by this Convention:

"*(a)* To supply information useful to competent authorities for investigative and evidentiary purposes on:

"(i) The composition, structure or activities of criminal organizations;

"(ii) Links, including international links, with other criminal organizations;

[6]Several delegations noted that paragraphs 4 and 5 in option 2 required clarification and some delegations proposed that the substance should be transferred to article 14, on mutual legal assistance. One delegation proposed that consideration should be given to integrating article 18 bis with article 18. Several delegations proposed that the two paragraphs in option 2 should be deleted. One delegation proposed that consideration should be given to the protection of the identity and image of the person in question.

[7]One delegation noted that this paragraph required clarification, since conceptually a state witness was not a defendant and thus did not need to be granted immunity.

"(iii) Offences that criminal organizations have committed or might commit;

"*(b)* To provide factual, concrete help to competent authorities that may contribute to depriving criminal organizations of their resources or of the proceeds of crime.[8]

"2. Each State Party shall provide for the possibility of, in appropriate cases, mitigating punishment[9] of an accused person who provides substantial cooperation in the investigation or prosecution of [an offence established in article [...] of [any of the offences covered by] this Convention.

"2 bis. Each State Party shall give consideration to providing, in accordance with its fundamental legal principles, the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of [any of the offences established in articles [...] of this Convention] [an offence covered by this Convention].[10]

"3. Protection of such persons shall be as provided for in article 18 of this Convention.

"4. Where a person referred to in paragraph 1 of this article can provide substantial cooperation to the competent authorities of another State, the States Parties concerned may consider entering into arrangements, in accordance with domestic law, concerning the potential provision by the other State of the treatment described in paragraph 2 of this article.

Seventh session: 17-28 January 2000

Notes by the Secretariat

2. Delegations based their comments on the text of article 18 ter of the revised draft convention contained in document A/AC.254/4/Rev.6, which was the same as that contained in document A/AC.254/4/Rev.5.

Rolling text (A/AC.254/4/Rev.7)

"Article 18 ter[11]
"Measures to enhance cooperation with law enforcement authorities

"1. States Parties shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups covered by this Convention:

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[8]Proposal submitted by Germany at the fifth session of the Ad Hoc Committee, at the request of the Chairman, to replace former paragraph 1 of this article.

[9]The United States indicated that this phrase might include not only prescribed but also de facto mitigation of punishment. That view was supported by many delegations.

[10]Paragraphs 2 and 2 bis constituted a reformulation of former paragraph 2 that reflected the concerns expressed at the fifth session of the Ad Hoc Committee.

[11]Except where indicated otherwise, the text of this article was provisionally approved at the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

"*(a)* To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

"(i) The identity, nature, composition, structure or activities of organized criminal groups;

"(ii) Links, including international links, with other organized criminal groups;[12]

"(iii) Offences that organized criminal groups have committed or may commit;

"*(b)* To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

"2. Each State Party shall give consideration to providing for the possibility of, in appropriate cases, mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of any of the offences covered by this Convention.

"2 bis. Each State Party shall give consideration to providing, in accordance with its fundamental legal principles, the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of [any of the offences established in articles [...] of this Convention] [an offence covered by this Convention].[13]

"3. Protection of such persons shall be as provided for in article 18 of this Convention.

"4. Where a person referred to in paragraph 1 of this article can provide substantial cooperation to the competent authorities of another State, the States Parties concerned may consider entering into arrangements, in accordance with domestic law, concerning the potential provision by the other State of the treatment described in paragraphs 2 and 2 bis of this article."

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Rev.8)

"Article 18 ter
"Measures to enhance cooperation with law enforcement authorities

"1. States Parties shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups covered by this Convention:

"*(a)* To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

[12]At the informal consultations held during the seventh session of the Ad Hoc Committee, Turkey expressed its preference for using the term "criminal organizations".

[13]There was considerable discussion on this paragraph at the informal consultations held during the seventh session of the Ad Hoc Committee. Following the discussion and several drafting proposals, the Chairman asked interested delegations to reflect on the caveats already included in the paragraph, which were designed to allay juridical concerns and to take into account differences in legal systems, and to determine whether there was a need for an amended formulation for consideration at the eighth session of the Ad Hoc Committee. The concern expressed by the Netherlands regarding the potential effects of this paragraph on international cooperation was met by including a reference to this paragraph in paragraph 4.

"(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

"(ii) Links, including international links, with other organized criminal groups;[14]

"(iii) Offences that organized criminal groups have committed or may commit;

"*(b)* To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

"2. Each State Party shall give consideration to providing for the possibility of, in appropriate cases, mitigating punishment[15] of an accused person who provides substantial cooperation in the investigation or prosecution of any of the offences covered by this Convention.

"3. Each State Party shall give consideration to providing, in accordance with its fundamental legal principles, the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of [any of the offences established in articles [...] of this Convention] [an offence covered by this Convention].

"4. Protection of such persons shall be as provided for in article 18 of this Convention.

"5. Where a person referred to in paragraph 1 of this article can provide substantial cooperation to the competent authorities of another State, the States Parties concerned may consider entering into arrangements, in accordance with domestic law, concerning the potential provision by the other State of the treatment described in paragraphs 2 and 3 of this article."

Notes by the Secretariat

3. At its eighth session, the Ad Hoc Committee provisionally approved article 18 ter, subject to the resolution of some issues that would need to be discussed in the light of the finalization of other provisions of the convention, in particular article 2 (see A/AC.254/28, para. 12). At its tenth session, the Ad Hoc Committee considered, finalized and approved article 18 ter, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (see A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

[14]At the eighth session of the Ad Hoc Committee, Turkey reserved its position on the use of the term "organized criminal groups" until the finalization of article 2 bis of the draft convention.

[15]This phrase might include not only prescribed but also de facto mitigation of punishment (see the interpretative note in section C below).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 26
Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

C. Interpretative note

The interpretative note on article 26 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 49) is as follows:

Paragraph 2

The term “mitigating punishment” might include not only prescribed but also de facto mitigation of punishment.

Article 27. Law enforcement cooperation

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 19[1]
"Law enforcement cooperation

"1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies.

"2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in article(s) [...] [*alternatively:* the offences covered by this Convention]. Each State Party shall, in particular, adopt effective measures:

"*(a)* To establish and maintain channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of a central authority or authorities, to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

"*(b)* To cooperate with one another in conducting inquiries, with respect to offences established in this Convention, concerning:

"(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

"(ii) The movement of proceeds or property derived from the commission of such offences;

"(iii) The movement of instrumentalities used or intended for use in the commission of such offences;

"*(c)* In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party

[1]While supporting the idea of direct law enforcement cooperation, some delegations felt that this article needed further consideration in order to direct attention to its relationship with more traditional means of cooperation, such as mutual legal assistance.

participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;

"*(d)* To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

"*(e)* To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers.

"3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) [...] [*alternatively:* the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:[2]

"*(a)* Take all appropriate measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;

"*(b)* Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) [...] [*alternatively:* of offences covered by this Convention].

"[4. States Parties shall:[3]

"*(a)* Designate knowledgeable law enforcement personnel to be available on a 24-hour basis to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology; and

"*(b)* Review their domestic criminal legislation to ensure that such abuses are adequately addressed.]"

Rolling text (A/AC.254/4/Rev.1)

"Article 19[4]
"Law enforcement cooperation

"1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies.

"2. States Parties shall [endeavour to] cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in arti-

[2]It was proposed that subparagraphs *(a)* and *(b)* of this paragraph should be transferred to paragraph 2.

[3]This was an issue proposed for the first time during the informal preparatory meeting and discussed only preliminarily.

[4]At the first session of the Ad Hoc Committee, emphasis was placed on distinguishing between mutual legal assistance, considered in article 14, and law enforcement cooperation. One delegation proposed that, since articles 15, 18, 18 bis and 19 dealt with issues that were conceptually different from articles 16 and 17, those four articles should be brought together. One delegation noted the need to train also diplomatic and consular staff in the areas covered by article 19. The majority of delegations agreed on the importance of article 19 and the need to facilitate law enforcement cooperation. In addition, it was noted that much of the language in the article came directly from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627). It was also noted that softening the provisions would be a step backwards from that instrument.

cle(s) [...] [*alternatively:* the offences covered by this Convention]. Each State Party shall,[5] in particular, adopt effective measures:

"*(a)* To establish and maintain channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of a central authority or authorities,[6] to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

"*(b)* To cooperate with one another in conducting inquiries, with respect to offences established in this Convention, concerning:

"(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

"(ii) The movement of proceeds or property derived from the commission of such offences;

"(iii) The movement of instrumentalities used or intended for use in the commission of such offences;

"*(c)* In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate[7] authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;[8]

"*(d)* To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

"*(e)* To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers.[9]

"3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) [...] [*alternatively:* the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:[10]

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[5]Several States noted that the implementation of some of the measures foreseen in the subparagraphs of paragraph 2, such as in subparagraph *(e),* on liaison officers, should be optional and not obligatory.

[6]Many delegations were of the view that the reference to central authorities should be deleted or placed in square brackets, as that concept more properly belonged to mutual legal assistance (article 14). In that connection, it was noted that the provision of the 1988 Convention, on which article 19 was based, did not include a reference to central authorities. One delegation proposed that law enforcement cooperation should take place only through central authorities. Other delegations noted that the designation of the authority or authorities responsible for law enforcement cooperation should depend on, among other factors, the administrative structure of the State. One delegation emphasized the importance of having a contact point in order to pursue the possibilities of law enforcement cooperation.

[7]One delegation proposed the insertion of the word "central". Another delegation opposed it and noted the need to take into consideration the administrative structure of the State when deciding on the authority which should be charged with the responsibility referred to in the present paragraph.

[8]One delegation expressed concerns regarding this paragraph. Other delegations emphasized in this connection the importance of respecting the sovereignty and territorial integrity of States.

[9]One delegation suggested that the concept and role of "liaison officers" should be clarified. Another State proposed adding to the end of this paragraph the words "as well as, where appropriate, the extension and expansion of the competence of existing liaison officers".

[10]Two delegations proposed that paragraph 3 should be transferred to article 22, on prevention at the national level.

"*(a)* Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

"*(b)* Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) [...] [*alternatively:* of offences covered by this Convention].[11]

"[4. States Parties shall:[12]

"*(a)* Designate knowledgeable law enforcement personnel to be available [on a 24-hour basis][13] to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology;[14] and

"*(b)* Review their domestic legislation to ensure that such abuses are adequately addressed.]"

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. The version of article 19 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-4).

Poland (A/AC.254/L.81)

"Paragraph 1

"1. At the end of paragraph 1, add the following words: 'and, where such agreements or arrangements already exist, amending them with a view to giving effect to this Convention.'

"Paragraph 2

"2. In subparagraph 2 *(a),* replace the words 'To establish and maintain channels of communication' by the words 'To enhance and, where necessary, to establish channels of communication'.

"Paragraph 3

"3. In subparagraph 3 *(b),* replace the words 'Exchange information in accordance with their national law' by the words 'Exchange information and process criminal intelligence using, where appropriate, arrangements provided by the International Criminal Police Organization'.

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[11]One delegation noted the need to ensure the confidentiality of any information exchanged on the basis of this subparagraph.

[12]Some delegations stressed the need for further consideration of this paragraph and one delegation proposed its deletion, on the grounds that it imposed significant financial obligations on States parties. It was suggested that the paragraph should be reformulated so that the measures envisaged would be discretionary.

[13]One delegation proposed the deletion of the words appearing in square brackets.

[14]One delegation noted that these measures should be considered also in connection with other types of offences.

"Paragraph 4

"4. Replace paragraph 4 with the following:

'[4. States Parties shall endeavour:

'*(a)* To designate knowledgeable law enforcement personnel to be available [on a 24-hour basis] to respond to transnational organized crime using, where available, the facilities provided for under paragraph 3 *(b)* of this article, especially such crime committed through the use of computers, telecommunications networks and other forms of modern technology; and

'*(b)* To review their domestic legislation to ensure that such abuses are adequately addressed.]'"

Finland (A/AC.254/L.88)

Paragraph 1

Finland proposed that the following sentence should be added to article 19, paragraph 1, of the draft convention:

"Whenever appropriate, States Parties shall make full use of agreements and arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies."

United States of America (A/AC.254/L.91)

Paragraph 2

The United States proposed that the following text should be inserted at the end of article 19, paragraph 2:

"*(f)* To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, as applicable, routes and conveyances, and use of false identities, altered or false documents, or other means of concealing their activities."

Rolling text (A/AC.254/4/Rev.5)

"Article 19[15]
"Law enforcement cooperation

"1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them with a view to giving effect to this Convention. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this

[15]This article, amended at the fifth session of the Ad Hoc Committee, would appear to cover the method relating to law enforcement cooperation referred to in the three draft protocols. It was suggested that it might not be necessary to have separate provisions on matters relating to law enforcement cooperation in each of the draft protocols.

Convention as the basis for mutual law enforcement cooperation in respect of any offence covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

"2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in article(s) [...] of this Convention [*alternatively:* the offences covered by this Convention]. Each State Party shall, in particular, adopt effective measures:

"*(a)* To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of [a central authority or authorities],[16] to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;[17]

"*(b)* To cooperate with other State Parties in conducting inquiries, with respect to offences established in this Convention, concerning:

"(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

"(ii) The movement of proceeds or property derived from the commission of such offences;

"(iii) The movement of instrumentalities[18] used or intended for use in the commission of such offences;[19]

"*(c)* In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;

"*(d)* To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

"*(e)* To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers;

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[16]As indicated above, many delegations were of the view that the reference to central authorities should be deleted or placed in square brackets, as the concept more properly belonged under mutual legal assistance (article 14). In this connection, it was noted that the provision of the 1988 Convention, on which article 19 was based, did not include a reference to central authorities. At the fifth session of the Ad Hoc Committee, the proposal to replace this phrase with "points of contact among such authorities, agencies and services" received widespread support. Spain stated that the deletion of the reference to central authorities and its replacement with a reference to the establishment of contact points needed further study by the Ad Hoc Committee.

[17]At the fifth session of the Ad Hoc Committee, the Islamic Republic of Iran and Pakistan suggested either deleting the reference to "links with other criminal activities" or limiting the reference to "other organized criminal activities".

[18]At the fifth session of the Ad Hoc Committee, the Syrian Arab Republic questioned the use of the term "instrumentalities" in this connection.

[19]At the fifth session of the Ad Hoc Committee, the Comoros, Mali and Senegal questioned the accuracy of the French version of this paragraph.

"*(f)* To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities.

"3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) [...] of this Convention [*alternatively:* the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:

"*(a)* Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

"*(b)* Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) [...] of this Convention [*alternatively:* of offences covered by this Convention].[20]

"[4. States Parties shall:[21]

"*(a)* Designate knowledgeable law enforcement personnel to be available [on a 24-hour basis] to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology; and

"*(b)* Review their domestic legislation to ensure that such abuses are adequately addressed.]"[22]

Ninth session: 5-16 June 2000

Notes by the Secretariat

2. The version of article 19 contained in document A/AC.254/4/Rev.5 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.6-8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 19[23]
"Law enforcement cooperation[24]

"1. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or

[20]At the fifth session of the Ad Hoc Committee, discussion on this paragraph was deferred until article 22 could be considered.

[21]See footnote 12 above.

[22]At the fifth session of the Ad Hoc Committee, it was indicated that this paragraph required substantial reformulation.

[23]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

[24]See footnote 15 above.

arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

"2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

"*(a)* To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of [a central authority or authorities],[25] to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

"*(b)* To cooperate with other States Parties in conducting inquiries, with respect to offences covered by this Convention, concerning:

"(i) The identity, whereabouts and activities of persons suspected of involvement in the offences covered by this Convention;

"(ii) The movement of proceeds or property derived from the commission of such offences;

"(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

"*(c)* In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;[26]

"*(d)* To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

"*(e)* To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers;

"*(f)* To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

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[25]As indicated above, many delegations were of the view that the reference to central authorities should be deleted or placed in brackets, as the concept more properly belonged under mutual legal assistance (article 14). In this connection, it was noted that the provision of the 1988 Convention on which article 19 was based did not include a reference to central authorities. At the informal consultations held during the ninth session of the Ad Hoc Committee, the proposal to replace the words in square brackets with the words "points of contact among such authorities, agencies and services" received widespread support. Spain insisted on keeping the text in its current form until a final decision could be reached by the Ad Hoc Committee.

[26]The Ad Hoc Committee might wish to continue the discussion of this subparagraph in the light of the final formulation of article 14 bis.

"*(g)* To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

"3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology."

Notes by the Secretariat

3. At its tenth session (17-28 July 2000), the Ad Hoc Committee considered, finalized and approved article 19, as amended. It was decided that no reference to the designation of a central authority or authorities should be made in subparagraph 1 *(a)*. The addition of the phrase "or the location of other persons concerned" in final subparagraph 1 *(b)* (i) was proposed by China. Paragraph 2 *(c)* was deleted as a result of the decision of the Ad Hoc Committee to include in the draft convention a separate article on joint investigations (see also note 2 by the Secretariat concerning article 19 of the convention). The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 27
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other

experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

C. Interpretative notes

The interpretative notes on article 27 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 50-52) are as follows:

Paragraph 1

(a) The words "consistent with their respective domestic legal and administrative systems" provide States parties with flexibility regarding the extent and manner of cooperation. For example, this formulation enables States parties to deny cooperation where it would be contrary to their domestic laws or policies to provide the assistance requested.

Paragraph 1 (a)

(b) States parties will make their own determination as to how best to ensure the secure and rapid exchange of information. Many delegations endorsed the use of direct communication between their different domestic law enforcement agencies and foreign counterparts. However, States parties that feel it more advisable to establish a central point of contact to ensure efficiency would not be precluded from doing so.

Paragraph 3

(c) The forms of modern technology referred to in article 27, paragraph 3, include computers and telecommunications networks.

Article 28. Collection, exchange and analysis of information on the nature of organized crime

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 20
"Collection and sharing of information on organized crime

"1. States Parties shall consider developing and sharing analytical expertise concerning organized crime activities. In this connection, common definitions, standards and methodologies shall be applied as appropriate.

"2. States Parties shall consider, with the support of the scientific community, analysing trends in organized crime in their countries, as well as the circumstances in which organized crime can operate, the professional groups involved and the communications technologies.

"3. States Parties shall consider monitoring their policies and actual measures to prevent and combat organized crime and shall make assessments of their effectiveness and efficiency.

"4. The Secretary-General, with the assistance of the United Nations Interregional Crime and Justice Research Institute and the other institutes in the United Nations Crime Prevention and Criminal Justice Programme network, shall undertake to collect and analyse public information and research findings concerning organized crime, prepare overviews of global trends in organized crime and prepare inventories of policies and measures to prevent and control organized crime.

Rolling text (A/AC.254/4/Rev.1)

"Article 20
"Collection and [exchange] of information on organized crime[1]

"1. States Parties shall consider developing and sharing analytical expertise concerning organized crime activities. In this connection, common definitions, standards and methodologies shall be applied as appropriate.

[1]Some delegations proposed that this article should deal also with the establishment of international data banks and with the work of the International Criminal Police Organization and corresponding regional arrangements in this connection. One delegation, speaking on behalf of a regional group, stressed the need to establish international data banks that would respond to the needs of developing countries, since the establishment of national data banks would impose a financial obligation on States parties. The same delegation noted the need to have a linkage with national financial investigative units established to investigate money-laundering. One delegation noted the need to redraft this article to specify both the objectives and the mechanisms to be used. It was also noted that this article dealt with analytical data, not operational data.

"2. Each of the States Parties shall consider [, with the support of the scientific community,][2] analysing trends in organized crime in its territory, as well as the circumstances in which organized crime can operate, the professional groups involved and the communications technologies.

"3. States Parties shall consider monitoring their policies and actual measures to prevent and combat organized crime and shall make assessments of their effectiveness and efficiency.[3]

"4. The Secretary-General, with the assistance of the United Nations Interregional Crime and Justice Research Institute and the other institutes in the United Nations Crime Prevention and Criminal Justice Programme network, shall undertake to collect and analyse public information and research findings concerning organized crime, prepare overviews of global trends in organized crime and prepare inventories of policies and measures to prevent and control organized crime."[4]

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. The version of article 20 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-5).

Proposal resulting from the informal consultations held during the sixth session of the Ad Hoc Committee (A/AC.254/L.117)

"Article 20
"Collection and exchange of information on the nature of organized crime

"1. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through interregional and regional organizations, including the International Criminal Police Organization. For this purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

"2. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

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[2]One delegation questioned the inclusion of the phrase appearing in square brackets. It was noted in response that the phrase was intended to emphasize the importance of utilizing academic research to improve the quality and effectiveness of the response to organized crime.

[3]One delegation proposed that paragraphs 3 and 4 should be transferred to article 23.

[4]The possibility of transferring this paragraph to article 23 was to be considered. One delegation proposed the insertion of the words "and other scientific and specialized bodies, as well as regional bodies," after the words "Programme network". Another delegation drew attention to the financial implications of this paragraph and noted that the style of the paragraph would be more appropriate in a resolution than in a convention. Two delegations proposed the inclusion of a paragraph on the responsibility of States parties to provide the Secretary-General with the information referred to in this paragraph.

"3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

[Paragraph 4 is deleted, with its substance to be reflected in article 23 bis]"

Rolling text (A/AC.254/4/Rev.6)

"Article 20
"Collection and exchange of information on the nature of organized crime

"1. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through interregional and regional organizations, including the International Criminal Police Organization. For this purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

"2. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

"3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency."

Ninth session: 5-16 June 2000

Notes by the Secretariat

2. The version of article 20 contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 20[5]
"Collection and exchange of information on the nature of organized crime

"1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

[5]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

"2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For this purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

"3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency."

Notes by the Secretariat

3. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 20 (see the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 28
Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

C. Interpretative note

The interpretative note on article 28 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 53) is as follows:

Paragraph 2

The mention of international and regional organizations is intended to refer to all relevant organizations, including the International Criminal Police Organization (Interpol), the Customs Cooperation Council (also called the World Customs Organization) and the European Police Office (Europol).

Article 29. Training and technical assistance

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 21[1]
"Training and technical assistance

"1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:[2]

"*(a)* Methods used in the prevention, detection and control[3] of the offences established in this Convention;

"*(b)* Routes and techniques used by persons suspected of involvement in offences established in this Convention, including in transit States, and appropriate countermeasures;

"*(c)* Monitoring of import and export of contraband;

"*(d)* Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

"*(e)* Collection of evidence;

"*(f)* Control techniques in free trade zones and free ports;

"*(g)* Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations; and

"*(h)* Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology.

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[1]Several delegations expressed concern about the fact that this article did not make reference to the role of the United Nations in the provision of training and technical assistance. A draft paragraph or paragraphs on this could be inserted.

[2]It was suggested that the Ad Hoc Committee might wish to consider the establishment, subject to the availability of extrabudgetary resources, of a database that would include training materials, as well as information concerning available training programmes. It was also noted that this task could be carried out by an institute in the Crime Prevention and Criminal Justice Programme network of the United Nations.

[3]One delegation expressed concern about the appropriateness of this term in this context.

"2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

"3. States Parties shall promote other techniques for mutual education that will facilitate extradition and mutual legal assistance. Such techniques may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

"4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

"5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen efforts to maximize operational and training activities within the International Criminal Police Organization (Interpol) and within other relevant bilateral and multilateral agreements or arrangements."

Rolling text (A/AC.254/4/Rev.1)

"Article 21[4]
"Training and technical assistance

"1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:

"*(a)* Methods used in the prevention, detection and control of the offences established in this Convention;

"*(b)* Routes and techniques used by persons suspected of involvement in offences established in this Convention, including in transit States, and appropriate countermeasures;

[4]One delegation, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China, stressed the need for an article on the provision of financial assistance to developing countries and undertook to provide a text for the second session of the Ad Hoc Committee. A relevant provision was subsequently included in article 21 bis (paragraph 2 *b*), which was incorporated in the draft convention at the sixth session of the Ad Hoc Committee and was approved in its final text as article 30. The delegation also stressed the need to include in the convention an article on international development cooperation. One delegation noted that, although the wording of paragraph 1 was based on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627), the scope of that convention was more limited. Therefore, consideration should be given to the appropriateness of this wording in a convention on transnational organized crime, which would have a considerably broader scope. One delegation noted the need to draw the attention of Governments and regional cooperation agencies to the importance of the issues dealt with in this article.

"*(c)* Monitoring of import and export of contraband;

"*(d)* Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

"*(e)* Collection of evidence;

"*(f)* Control techniques in free trade zones and free ports;

"*(g)* Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

"*(h)* Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology [; and

"*(i)* Methods used in the protection of victims and witnesses].

"2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

"3. States Parties shall promote other techniques for mutual education that will facilitate extradition and mutual legal assistance. Such techniques may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

"4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

"5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen [, to the extent necessary,] efforts to maximize operational and training activities within the International Criminal Police Organization [and the World Customs Organization] and within other relevant bilateral and multilateral agreements or arrangements."

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. The version of article 21 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-5). These drafts of the convention made reference to the official name of the World Customs Organization, which is "Customs Cooperation Council".

Rolling text (A/AC.254/4/Rev.6)

"Article 21
"Training and technical assistance

"1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:

"*(a)* Methods used in the prevention, detection and control of the offences covered by this Convention;

"*(b)* Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

"*(c)* Monitoring of import and export of contraband;

"*(d)* Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

"*(e)* Collection of evidence;

"*(f)* Control techniques in free trade zones and free ports;

"*(g)* Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

"*(h)* Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

"*(i)* Methods used in the protection of victims and witnesses.

"2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

"3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

"4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

"5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training

activities within interregional and regional organizations, including, inter alia, the International Criminal Police Organization, and within other relevant bilateral and multilateral agreements."

Ninth session: 5-16 June 2000

Notes by the Secretariat

2. The version of article 21 contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 21[5]
"Training and technical assistance

"1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:

"*(a)* Methods used in the prevention, detection and control of the offences covered by this Convention;

"*(b)* Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

"*(c)* Monitoring of import and export of contraband;

"*(d)* Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

"*(e)* Collection of evidence;

"*(f)* Control techniques in free trade zones and free ports;

"*(g)* Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

"*(h)* Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

"*(i)* Methods used in the protection of victims and witnesses.

[5]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

"2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

"3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

"4. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements."

Notes by the Secretariat

3. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 21, as last amended. The addition of the phrase "and to the extent permitted by domestic law" in paragraph 1 was proposed by Brazil. The phrase "import and export" in subparagraph 1 *(c)* was replaced by the word "movement" on the basis of a proposal submitted by Burundi. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 29

Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

C. Interpretative note

The interpretative note on article 29 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 54) is as follows:

Paragraph 4

The mention of international and regional organizations is intended to refer to all relevant organizations, including the International Criminal Police Organization (Interpol), the World Customs Organization and the European Police Office (Europol).

Article 30. Other measures: implementation of the Convention through economic development and technical assistance

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Rev.6)

"Article 21 bis
"Other measures: implementation of the Convention through economic development and technical assistance[1]

"1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on sustainable development.

"2. States Parties shall make concrete efforts to the extent of their capacities and in coordination with the international agencies:

"*(a)* To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to combat, eradicate and prevent transnational organized crime;

"*(b)* To provide more constructive opportunities for the sustainable economic development of developing countries. This will require financial and material assistance to prepare developing countries to fight transnational organized crime effectively and to help them implement the Convention successfully;

"*(c)* To establish a special United Nations fund for technical cooperation in order to provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. States Parties shall endeavour to make adequate and regular voluntary contributions to the fund. States Parties shall also consider, in accordance with their domestic legislation and the provisions of this Convention, contributing to the fund a percentage of the money or of the corresponding value of illicit assets confiscated in accordance with the provisions of this Convention;

[1]The text of this article was presented at the sixth session of the Ad Hoc Committee by India on behalf of the Group of 77 (A/AC.254/L.108). During the preliminary discussion that ensued, there was support for many of the principles embodied in the article. Several proposals were made regarding the best way of articulating those principles, including considering the matter in connection with articles 21 and 23.

"*(d)* To encourage and persuade other States Parties and financial institutions to join them in the transfer of technology and increased technical cooperation by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

"3. These measures shall be without prejudice to existing foreign investment commitments or to other financial cooperation arrangements at the bilateral, regional or international level."

Ninth session: 5-16 June 2000

Notes by the Secretariat

1. The version of article 21 bis contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 21 bis[2]
"Other measures: implementation of the Convention through economic development and technical assistance

"1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

"2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with the international agencies:

"*(a)* To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

"*(b)* To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement the Convention successfully;

"*(c)* To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated to that purpose in a United Nations funding mechanism;[3]

[2]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

[3]The Ad Hoc Committee agreed that the resolution submitting the draft convention and its protocols to the General Assembly should include an operative paragraph specifying that, until the conference of the parties decided otherwise, the account mentioned in this paragraph would be operated within the United Nations Crime Prevention and Criminal Justice Fund.

"[*(d)* States Parties shall also consider, in accordance with their domestic legislation and the provisions of this Convention, contributing to the aforementioned account a percentage of the money or of the corresponding value of illicit assets confiscated in accordance with the provisions of this Convention];

"*(e)* To encourage and persuade other States and financial institutions as appropriate to join them in efforts under this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.[4]

"3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

"4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime."

Notes by the Secretariat

2. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 21 bis, as amended. It was decided that subparagraphs 2 *(c)* and *(d)* should be merged and that the wording "may give special consideration" should be used in former subparagraph 2 *(d),* as proposed by Brazil. The last amendments are reflected in the final text of the Convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 30
Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

[4]Cameroon expressed the view that the issue covered by this paragraph should be dealt with in article 7 ter and referred to a proposal that Cameroon had made at the eighth session of the Ad Hoc Committee together with South Africa.

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31. Prevention

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 22
"Prevention[1, 2]

"1. States Parties shall consider taking steps to reduce to the extent possible existing social, legal, administrative or technical opportunities for criminal organizations to commit profitable crimes and to alleviate the circumstances that make socially marginalized groups vulnerable to the prospect of a criminal career.

"2. States Parties shall consider setting up or supporting technical cooperation programmes aimed at the prevention of organized crime by social, legal or technical means and shall encourage international funding agencies to promote such programmes.

"3. States Parties shall consider collecting and exchanging information with respect to registered legal persons and the physical persons involved in their creation, direction and funding, with a view to preventing the penetration of organized crime in the public and legitimate private sector.

"4. States Parties shall consider reviewing their national legislation in order to ensure that it provides for the opportunity to exclude from participation in tender procedures conducted by the State applicants who have committed offences connected with organized crime or whose funds have been illegally acquired.

"5. States Parties undertake that their organs and services, in particular their security services, will under no circumstances cooperate with criminal organizations in any way other than using individual informers in the fight against the crimes in which such organizations engage."

Rolling text (A/AC.254/4/Rev.1)

"Article 22[3]
"Prevention at the national level

"1. With a view to reducing existing or future opportunities for criminal organizations to participate in legal markets while acquiring illegal gains through activities

[1]At the informal preparatory meeting held in Buenos Aires in 1998, this draft article was not discussed. However, there was widespread acceptance of the principle that the convention should include provisions on prevention.

[2]At the first session of the Ad Hoc Committee, the Netherlands undertook to provide a new text for this article.

[3]Proposed by the Netherlands at the first session of the Ad Hoc Committee (see A/AC.254/L.3).

such as illegal trafficking in motor vehicles, firearms, women and children and immigrants, States Parties shall take appropriate legislative and administrative measures, in particular:[4]

"*(a)* To prevent the misuse of legal persons by organized crime through:

"(i) The collection and storage of information on legal persons and natural persons involved in their establishment, management and funding;[5]

"(ii) The deprivation of the right of persons convicted for organized criminal activities to act as directors of legal persons incorporated in their jurisdiction;[6]

"(iii) The establishment of national registers of persons disqualified as directors of legal persons; and

"(iv) The exchange of the types of information referred to under subparagraphs *(a)* (i) and (iii) of this paragraph with competent authorities of other States Parties;

"*(b)* To strengthen cooperation between public and relevant private organizations, including industries;[7]

"*(c)* To promote the development of standards and procedures designed to safeguard the integrity of public and private organizations, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants; and

"*(d)* To exclude from participation in tender procedures conducted by public authorities applicants[8] who have been convicted for offences connected with organized crime and to deny subsidies or licences to such applicants.

"2. With a view to reducing existing or future opportunities for criminal organizations to recruit new members from vulnerable groups of the population,[9] States Parties shall establish adequate prevention programmes.[10]

"3. With a view to reducing recidivism, States Parties shall assist in reintegrating into society, for example through vocational and educational training, persons convicted of having engaged in organized criminal activities.[11]

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[4]Many delegations were of the view that the language of this paragraph was too mandatory. Those delegations also expressed concern about the limited scope of the provision, especially with regard to the specific reference to offences, in view of the ongoing consideration of the scope of the convention and the additional international legal instruments. One delegation was of the opinion that the first paragraph of the original text should be retained. That paragraph was as follows: "1. States Parties shall consider taking steps to reduce to the extent possible existing social, legal, [cultural], administrative, technical [or any other] opportunities for criminal organizations to commit [profitable crimes] [any punishable offence] and to alleviate the circumstances that make socially marginalized groups vulnerable to the prospect of a criminal career." The words "or any other" and "any punishable offence" were suggested by that delegation. Other delegations recommended the addition of the word "cultural". One delegation was of the view that the article should cover not only illegal markets, but also the risk posed by organized criminal groups to legal markets by virtue of their efforts to infiltrate them.

[5]One delegation expressed concern about the protection of personal data and information.

[6]Many delegations thought that the provisions of this and the subsequent subparagraphs were too far-reaching. Several delegations expressed the view that measures such as these should be linked with the gravity of the offence and the size of the legal person and that the exclusion should be limited in time. Other delegations advocated the retention of these measures, supplemented perhaps with the necessary safeguard clauses.

[7]For example, cooperation between a law enforcement agency and the car industry and insurance companies to prevent the theft of motor vehicles.

[8]Natural persons as well as legal persons.

[9]Several delegations were of the view that caution was required in dealing with the issue of vulnerable groups.

[10]Several delegations were of the view that this paragraph should be more specific with regard to the measures to be taken, especially in view of its mandatory nature. One delegation noted that the measures should include cultural programmes and the use of the media, including the cinema.

[11]In particular, young or low-ranking participants in criminal organizations.

"4. Each of the States Parties shall consider:

"*(a)* Undertaking an analysis of patterns of and trends in transnational organized crime by systematically gathering information on organized crime within its territory;

"*(b)* Developing national projects[12] aimed at the prevention of transnational organized crime; and

"*(c)* Establishing and promoting best practices to prevent transnational organized crime.

"[5. States Parties shall undertake to ensure that their organs and services, in particular their security services, under no circumstances cooperate with criminal organizations in any way other than using individual informers to fight the types of crime in which such organizations engage.]"[13]

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. The version of article 22 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-5).

2. The participants at the informal consultations held during the sixth session of the Ad Hoc Committee brought to the attention of the Ad Hoc Committee the revised text of article 22 contained in document A/AC.254/L.117. While one delegation requested additional time to study the revised text, it was generally considered the basis for final review by the Ad Hoc Committee. The text of article 22, as revised in the context of these informal consultations, is reflected in the draft of the convention contained in document A/AC.254/4/Rev.6.

Rolling text (A/AC.254/4/Rev.6)

"Article 22
"Prevention

"1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

"2. States Parties shall endeavour, in accordance with their constitutional principles, to reduce existing or future opportunities for organized criminal groups to participate in legal markets while acquiring proceeds of criminal offences covered by this Convention, through appropriate legislative, administrative or other measures. These measures should focus on:

"*(a)* The strengthening of cooperation between law enforcement agencies or public prosecutors and relevant private entities, including industry;

"*(b)* The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of

[12]Either pilot or field projects.

[13]At the first meeting of the Ad Hoc Committee, most delegations were of the view that this paragraph should be deleted. Two delegations expressed the wish to retain this paragraph.

conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

"*(c)* The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

"*(d)* The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

"(i) The establishment of public records on legal persons and natural persons involved in the establishment, management and funding of legal persons;

"(ii) The introduction of the possibility to disqualify by court order or any appropriate means for a reasonable period of time persons convicted of criminal offences covered by this Convention from acting as directors of legal persons incorporated in their jurisdiction;

"(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

"(iv) The exchange of information contained in the records referred to in subparagraphs *(d)* (i) and (iii) of this paragraph with competent authorities of other States Parties.

"3. States Parties shall endeavour to promote the reintegration into society of persons convicted of criminal offences covered by this Convention.

"4. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to abuse by organized criminal groups.

"5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

"6. Each State Party shall inform the Secretary-General of the name and address of the authority or authorities[14] that can assist other States Parties in developing measures to prevent transnational organized crime.

"7. States Parties shall, as appropriate, collaborate with each other and relevant international organizations in promoting and developing the measures referred to in this article, including by participating in international projects aimed at the prevention of transnational organized crime."[15]

Ninth session: 5-16 June 2000

Notes by the Secretariat

3. The version of article 22 contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

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[14]At the sixth session of the Ad Hoc Committee, Spain suggested that the reference should be to a central authority or authorities.

[15]At the sixth session of the Ad Hoc Committee, Colombia proposed that the following sentence should be added at the end of paragraph 7: "They shall also, as far as their means allow, allocate resources for the alleviation of the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime."

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 22[16]
"Prevention

"1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

"2. States Parties shall endeavour, in accordance with their constitutional principles, to reduce existing or future opportunities for organized criminal groups to participate in legal markets while acquiring proceeds of criminal offences covered by this Convention, through appropriate legislative, administrative or other measures. These measures should focus on:

"*(a)* The strengthening of cooperation between law enforcement agencies or public prosecutors and relevant private entities, including industry;

"*(b)* The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

"*(c)* The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

"*(d)* The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

"(i) The establishment of public records on legal persons and natural persons involved in the establishment, management and funding of legal persons;

"(ii) The introduction of the possibility to disqualify by court order or any appropriate means for a reasonable period of time persons convicted of criminal offences covered by this Convention from acting as directors of legal persons incorporated in their jurisdiction;

"(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

"(iv) The exchange of information contained in the records referred to in subparagraphs *(d)* (i) and (iii) of this paragraph with competent authorities of other States Parties.

"3. States Parties shall endeavour to promote the reintegration into society of persons convicted of criminal offences covered by this Convention.

"4. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to abuse by organized criminal groups.

"5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

[16]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

"6. Each State Party shall inform the Secretary-General of the name and address of the authority or authorities[17] that can assist other States Parties in developing measures to prevent transnational organized crime.

"7. States Parties shall, as appropriate, collaborate with each other and relevant international organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime."

Notes by the Secretariat

4. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 22, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 31
Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

[17] At the informal consultations held during the ninth session of the Ad Hoc Committee, Spain reiterated its position, expressed during the sixth session of the Ad Hoc Committee, that the reference should be to a central authority or authorities. Spain suggested that an alternative would be to refer to national authorities. Other delegations indicated that such a qualification would create difficulties, especially for federal States.

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs *(d)* (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

C. Interpretative note

The interpretative note on article 31 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 55) is as follows:

Paragraph 3

In line with constitutional principles of equality, there is no distinction intended between persons convicted of offences covered by the convention and persons convicted of other offences.

Notes by the Secretariat

5. A separate article 22 bis on prevention at the international level, proposed by the Netherlands (see A/AC.254/L.3), was also discussed in the context of the negotiation process and included in the early drafts of the convention (A/AC.254/4/Revs.1-5). This article read as follows:

"Article 22 bis
"Prevention at the international level

"States Parties shall collaborate with each other and relevant international organizations in promoting and developing the measures referred to in article 22 of this Convention, in particular through:

"*(a)* The nomination of a focal point;

"*(b)* The exchange of information on patterns of and trends in transnational organized crime and on best practices for the prevention of transnational organized crime; and

"*(c)* The participation in international projects aimed at the prevention of transnational organized crime."

The reference in the draft to international projects in subparagraph *(c)* was intended to include either pilot or field projects. A number of delegations were of the view that this provision required clarification and that it was too obligatory in nature. Finally, in view of the revisions to article 22 of the draft convention agreed upon in the context of the informal consultations held at the sixth session of the Ad Hoc Committee, article 22 bis was considered to be superseded and it was therefore decided that it should be deleted (see A/AC.254/L.120).

Article 32. Conference of the Parties to the Convention

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 23[1]

"Option 1

"Article 23
"Role of the United Nations and other relevant organizations[2]

"1. For the purpose of examining the progress made by States Parties in achieving the fulfilment of the obligations undertaken in the present Convention, these States will provide periodic reports to the Commission on Crime Prevention and Criminal Justice, which will carry out the functions hereinafter provided.

"2. States Parties undertake to provide such reports within two years of the entry into force of the Convention for the State concerned, and thereafter every five years.

"3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the Convention in the country concerned.

"4. A State Party that has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of this article, repeat basic information previously provided.

"5. The Commission may request from the States Parties further information relevant to the implementation of the Convention.

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[1]The content of this article required further consideration.

[2]It was suggested that this article would require extensive redrafting since it included language that would perhaps be more appropriate in a resolution than in a treaty. During the discussion at the first session of the Ad Hoc Committee, a number of delegations were of the view that option 1 would not provide for an effective monitoring mechanism. Some delegations also questioned the appropriateness of reporting to the Commission on Crime Prevention and Criminal Justice, whose membership might not coincide with the signatories to the convention. Furthermore, it was suggested that a monitoring or follow-up mechanism would require a thorough discussion of issues such as confidentiality in respect of any reports containing sensitive operational information and involvement of non-governmental organizations.

"6. States Parties shall provide, as appropriate, reports to the Secretary-General on current and emerging organized crime activities in their States,[3] as well as on their experience with preventive measures and control measures.[4]

"7. The Commission shall make its recommendations and submit reports on its activities to the Economic and Social Council, in accordance with existing provisions.

"8. States Parties shall make their reports widely available to the public in their own countries.[5]

"9. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

"*(a)* Intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council and other invited multilateral organizations shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations entities to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

"*(b)* The Commission shall transmit, as it may consider appropriate, to the intergovernmental and non-governmental organizations, other multilateral organizations and the specialized agencies any reports from the States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Commission's observations and suggestions, if any, on those requests or indications;

"*(c)* The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

"*(d)* The Commission may make suggestions and general recommendations based on information received pursuant to article(s) [...] of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the Economic and Social Council, together with comments, if any, from the States Parties.

"Option 2

"Article 23
"Monitoring of implementation[6]

"1. States Parties shall cooperate in carrying out a programme of systematic monitoring of the implementation of the measures provided for by this Convention to combat organized crime.

"2. A committee of the States Parties shall be established for the purpose of carrying out monitoring functions under this article. The committee shall:

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[3]Some delegations felt that it might be difficult for States parties to provide reports on sensitive ongoing investigations.

[4]It was suggested that provisions might be inserted in this article on the possible role of the United Nations in preparing reports on current and emerging organized criminal activities, as well as on national experience with preventive measures and countermeasures, and in collecting and analysing information and research findings.

[5]A number of delegations thought that public dissemination of reports might not be advisable.

[6]This was a new proposal and was discussed only preliminarily.

"*(a)* Adopt periodic reports evaluating implementation by States Parties and adopt and issue reports on its own activities;

"*(b)* Promulgate procedures for assessing the level of implementation by States Parties (including with respect to submission of information by the Party being evaluated, the formation of evaluation teams made up of experts from States Parties to visit that Party and preparation of a preliminary evaluation for consideration by the Committee, and the discussion and adoption of the final evaluation report) and for carrying out its other functions.

"3. Meetings of the Committee shall be held at [insert location] once a year or, where circumstances require, in special session. They shall be held in camera.

"4. Every effort shall be made to reach decisions by consensus in the Committee. If consensus cannot be reached, decisions on substantive matters must be approved by a two-thirds majority of those States Parties present and voting, an absolute majority of States Parties constituting a quorum, while decisions on procedural matters shall be taken by a simple majority of those States Parties present and voting.

"5. Expenses incurred in conjunction with the work of the Committee shall be paid from assessed contributions made by States Parties and voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Committee."

Notes by the Secretariat

1. Options 1 and 2, as reflected in document A/AC.254/4, were maintained in document A/AC.254/4/Rev.1, with the addition of the following third option:

"Option 3[7]

"Article 23
"Conference of the Parties to the Convention

"1. A Conference of the Parties to this Convention is hereby established.

"2. The Conference, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any legal instruments related to the Convention and shall make, within its mandate, the decisions necessary to promote the effective monitoring and implementation of the Convention. To this end, the Conference shall:

"*(a)* Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objectives of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;

"*(b)* Promote and facilitate the exchange of information on measures adopted by the Parties to counter transnational organized crime;

[7]Option 3 was a proposal of Austria, intended to replace options 1 and 2 of article 23. It was submitted during the first session of the Ad Hoc Committee and preliminarily discussed. Austria also submitted explanatory notes on option 3 in a non-paper (see A/AC.254/5/Add.3). Further to the proposed new article 23, Austria suggested the insertion in the draft convention of two new articles, i.e. article 22 ter (see footnote 8 below) and article 23 bis dealing with the secretariat of the conference of the parties to the convention proposed in article 23 (see article 33 of the convention).

"*(c)* Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the States Parties, the overall effect of the measures taken pursuant to the Convention and the extent to which progress is being made towards the achievement of the objectives of the Convention;[8]

"*(d)* Consider and adopt regular reports on the implementation of the Convention;

"*(e)* Make recommendations on any matters necessary for the implementation of the Convention;

"*(f)* Seek to mobilize financial resources pursuant to articles 21 and 22 of the Convention;

"*(g)* Agree upon and adopt, by consensus, its own rules of procedure and financial rules;

"*(h)* Seek and utilize, where appropriate, the services and cooperation of and information provided by competent international organizations and intergovernmental and non-governmental bodies.

"3. The Conference shall adopt its rules of procedure at its first session.

"4. The first session of the Conference shall be convened by the Centre for International Crime Prevention of the Secretariat of the United Nations and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, regular sessions of the Conference shall be held every year unless otherwise decided by the Conference.

"5. [*Text on the participation of observers to be added*]."

2. The version of article 23 contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-5).

Sixth session: 6-17 December 1999

Austria and United States of America (A/AC.254/L.98)

"Article 23
"Conference of the Parties

"1. A Conference of the Parties to this Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and monitor the implementation of the Convention.

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[8]In view of the need for an article on the provision of information by States parties for the evaluation of the progress made in the implementation of the convention, Austria proposed the inclusion of a new article 22 ter, the text of which, as reflected in document A/AC.254/4/Rev.1, was as follows:

"Article 22 ter
"Communications from States Parties

"In order to promote progress in the implementation of the Convention, each of the States Parties shall communicate, within [...] months of the entry into force of the Convention and periodically thereafter, information on its policies and measures to implement the Convention. This information shall be reviewed by the Conference of the Parties to the Convention at its first session and periodically thereafter, in accordance with article 23 of this Convention."

"2. The Conference of the Parties shall convene not later than one year following the entry into force of the Convention. The first task of the Conference will be to agree upon and adopt rules of procedure and rules governing payment of expenses incurred in carrying out the activities described in paragraph 3 of this article.

"3. The Conference of the Parties shall agree upon mechanisms for accomplishing the following objectives:

"*(a)* Mobilizing and focusing financial resources for activities by States Parties under articles 21 and 22 of this Convention;

"*(b)* Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

"*(c)* Cooperating with relevant international and non-governmental organizations;

"*(d)* Considering and adopting periodic reports assessing implementation by States Parties;

"*(e)* Ensuring that States Parties provide the information needed for such periodic reports by submitting national reports, enabling visits to States Parties by expert evaluation teams and taking any other measures consistent with international law;

"*(f)* Making recommendations to improve the Convention and its implementation;

"*(g)* Performing any other functions consistent with this Convention."

Proposal submitted by a working group chaired by Argentina (A/AC.254/L.122)

"Article 23
"Conference of the Parties to the Convention

"1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and monitor the implementation of the Convention.

"2. The Conference of the Parties shall convene not later than one year following the entry into force of the Convention. The first task of the Conference will be to agree upon and adopt rules of procedure and rules governing the activities described in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

"3. The Conference of the Parties shall agree upon mechanisms for accomplishing the following objectives:

"*(a)* Facilitating activities by States Parties under articles 21 and 22 of this Convention, including by mobilizing voluntary contributions;

"*(b)* Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

"*(c)* Cooperating with relevant international and non-governmental organizations;

"*(d)* Considering and adopting periodic reports assessing implementation by States Parties;

"*(e)* Making recommendations to improve the Convention and its implementation;

"*(f)* Performing any other functions consistent with the Convention.

"4. For the purpose of subparagraphs 3 *(d)* and *(e)* of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through the information provided by the States Parties and through the promotion of, inter alia, meetings between national authorities and expert consultative teams in accordance with the rules established by the Conference pursuant to paragraph 2 of this article."

Rolling text (A/AC.254/4/Rev.6)

"Article 23
"Conference of the Parties to the Convention[9]

"1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and monitor the implementation of the Convention.

"2. The Conference of the Parties shall convene not later than one year following the entry into force of the Convention. The first task of the Conference will be to agree upon and adopt rules of procedure and rules governing the activities described in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

"3. The Conference of the Parties shall agree upon mechanisms for accomplishing the objectives mentioned in paragraph 1 of this article, including:[10]

"*(a)* Facilitating activities by States Parties under articles 21 and 22 of this Convention, including by mobilizing voluntary contributions;

"*(b)* Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

"*(c)* Cooperating with relevant international and non-governmental organizations;

"*(d)* Examining periodically the implementation of the Convention by States Parties;

"*(e)* Making recommendations to improve the Convention and its implementation.[11]

"4. For the purpose of paragraphs 3 *(d)* and *(e)* of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through the information provided by the States Parties and through the promotion of, inter alia, [meetings between national authorities[12] and expert consultative teams] [to be established][13] in accordance with the rules established by the Conference pursuant to paragraph 2 of this article."[14]

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[9]This article required further consideration, China stated that the new formulation of article 23 did not meet all its concerns.

[10]Japan expressed concern about the confidentiality of some information foreseen under this paragraph and proposed inserting the following words: "taking into account the need for confidentiality of some information arising from the nature of the fight against transnational organized crime". Other delegations were of the view that issues such as this could be left to the conference of the parties, as they were too detailed to be dealt with in the convention.

[11]The subparagraph making reference to "performing any other functions consistent with the Convention" as one of the objectives of the conference (included in both the proposals of Austria and the United States and of the working group), was deleted.

[12]Spain proposed that reference should be made to central national authorities.

[13]Proposal made by the Islamic Republic of Iran in an effort to achieve consensus.

[14]During the discussions in the working group, concerns were expressed about how the conference of the parties would actually function. It was, therefore, deemed appropriate to begin identifying issues that would be covered by the rules that the conference would agree upon and adopt in accordance with paragraph 2.

Notes by the Secretariat

3. At the sixth session of the Ad Hoc Committee, the discussion also focused on the text of article 22 ter. Pertinent proposals were submitted by China (A/AC.254/L.118), the working group chaired by Argentina (A/AC.254/L.122) and Yemen (A/AC.254/L.127). On the basis of the last two proposals, the text of article 22 ter was revised to read as follows (see A/AC.254/4/Rev.6):

"Article 22 ter
"Communication from States Parties

"Each State Party shall provide the Conference of the Parties to the Convention with information on its policies and legislative and administrative measures to implement the Convention, as required by the Conference of the Parties."

4. The version of article 23 contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 23[15]
"Conference of the Parties to the Convention

"1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of the Convention.

"2. The Conference of the Parties shall convene not later than one year following the entry into force of the Convention. The first task of the Conference will be to agree upon and adopt rules of procedure and rules governing the activities described in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).[16]

"3. The Conference of the Parties shall agree upon mechanisms for accomplishing the objectives mentioned in paragraph 1 of this article, including:

"*(a)* Facilitating activities by States Parties under articles 21, 21 bis and 22 of this Convention, including by encouraging the mobilization of voluntary contributions;

"*(b)* Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

[15]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

[16]At the informal consultations held during the ninth session of the Ad Hoc Committee, there was considerable discussion about the participation of signatories and non-signatories to the convention in the first session of the conference of the parties and about whether there should be any differentiation of status between the two categories of States. Japan undertook to consult other delegations and to propose appropriate text for a paragraph to be added to this article.

"*(c)* Cooperating with relevant international and non-governmental organizations;

"*(d)* Examining periodically the implementation of the Convention by States Parties;

"*(e)* Making recommendations to improve the Convention and its implementation.

"4. For the purpose of paragraphs 3 *(d)* and *(e)* of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through the information provided by the States Parties and through such supplemental review mechanisms as may be established by the Conference of the Parties.

"5. Each State Party shall provide the Conference of the Parties to the Convention with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement the Convention, as required by the Conference of the Parties."[17]

Notes by the Secretariat

5. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 23, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 32
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

[17]Former article 22 ter was incorporated, as amended, in article 23 as new paragraph 5.

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 *(d)* and *(e)* of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

C. Interpretative notes

The interpretative notes on article 32 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 56-58) are as follows:

Paragraph 2

(a) In developing rules concerning payment of its expenses, the conference of the parties to the convention should ensure that voluntary contributions are considered a source of funding.

Paragraph 3

(b) In discharging its tasks, the conference of the parties should give due regard to the need to preserve the confidentiality of certain information, given the nature of the fight against transnational organized crime.

Paragraph 5

(c) The conference of the parties should take into account the need to foresee some regularity in the provision of the information required. In addition, the term "administrative measures" is understood to be broad and to include information about the extent to which legislation, policies and other relevant measures have been implemented.

Article 33. Secretariat

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4/Rev.1)

"Article 23 bis[1, 2]
"Secretariat

"1. The Centre for International Crime Prevention of the Secretariat of the United Nations shall act as the secretariat of the Convention.

"2. The functions of the secretariat shall be:

"*(a)* To make arrangements for sessions of the Conference of the Parties to the Convention and to provide services for those sessions as required;

"*(b)* To compile and submit reports to the Conference;

"*(c)* To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

"*(d)* To prepare reports on its activities and present them to the Conference;

"*(e)* To ensure the necessary coordination with the secretariats of other relevant international bodies;

"*(f)* To assist States Parties, upon request, in analysing patterns and trends in transnational organized crime;

"*(g)* To set up a database of best practices developed by States Parties for the prevention of transnational organized crime;

"*(h)* To establish a network of contact persons from States Parties and, where appropriate, to facilitate the organization of meetings for the contact persons;

"*(i)* To promote and facilitate the organization of seminars and conferences for other national experts on the prevention of transnational organized crime;

"*(j)* To promote or facilitate the development by States Parties of international pilot projects and, where appropriate, to evaluate the pilot projects."[3]

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[1]In the context of the proposal submitted by Austria for the establishment of a conference of the parties to the convention (see under article 32 of the convention), the inclusion of a new article 23 bis in the draft convention was also proposed, to deal with issues relating to the secretariat of that conference.

[2]It was noted that the role proposed for the Centre for International Crime Prevention would have significant budgetary implications and would require careful consideration.

[3]Subparagraphs 2 *(f)* to *(j)* of this article were based on the version of article 22 proposed by the Netherlands (see A/AC.254/L.3).

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. The version of article 23 bis contained in document A/AC.254/4/Rev.1 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.2-5).

Austria and United States of America (A/AC.254/L.98)

"Article 23 bis
"Secretariat

"1. The Centre for International Crime Prevention of the Secretariat of the United Nations is authorized and designated to serve at the will and under the direct supervision of the Conference of the Parties as the Secretariat for the Conference of the Parties in carrying out the activities described in article 23, paragraph 3, of this Convention and shall convene the first meeting of the Conference.

"2. The Centre for International Crime Prevention shall assist the Conference of the Parties in preparing the reports assessing implementation, described in article 23, paragraph 3 *(d)* of this Convention and shall provide the Conference of the Parties with periodic reports on its activities under that article;

"3. The Centre for International Crime Prevention shall, upon request, assist States Parties in preparing the reports described in article 23, paragraph 3 *(e),* of this Convention on implementation of measures for which the Convention provides;

"4. The Centre for International Crime Prevention shall make arrangements for sessions of the Conference of the Parties, provide services for those sessions as required and ensure necessary coordination with the secretariats of other relevant international organizations."

Rolling text (A/AC.254/4/Rev.6)

"[Article 23 bis
"Secretariat[4]

"1. The Secretary-General shall convene the first session of the Conference of the Parties to the Convention and shall designate the Centre for International Crime Prevention of the Secretariat of the United Nations to serve as the secretariat for and at the direction of the Conference.

"2. The secretariat shall:

"*(a)* Assist the Conference of the Parties in carrying out the activities described in article 23 of this Convention and make arrangements for and provide the necessary services for the sessions of the Conference;

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[4]This article envisaged the tasks of the secretariat in relation to the work of the conference of the parties. After the Ad Hoc Committee had discussed the question of technical assistance, it would be necessary to consider whether language addressing the role of the secretariat in relation to such assistance needed to be added to this article.

"*(b)* Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 22 ter; and

"*(c)* Ensure the necessary coordination with the secretariats of other relevant international organizations.][5]"

Ninth session: 5-16 June 2000

Notes by the Secretariat

2. The version of article 23 bis contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 23 bis[6]
"Secretariat

"1. The Secretary-General shall convene the first session of the Conference of the Parties to the Convention and shall designate the Centre for International Crime Prevention of the Secretariat of the United Nations to serve as the secretariat for and at the direction of the Conference.[7]

"2. The secretariat shall:

"*(a)* Assist the Conference of the Parties in carrying out the activities described in article 23 of this Convention and make arrangements for and provide the necessary services for the sessions of the Conference;

"*(b)* Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in paragraph 5 of article 23 of this Convention; and

"*(c)* Ensure the necessary coordination with the secretariats of relevant international organizations."

Notes by the Secretariat

3. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 23 bis, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

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[5]The formulation of this article required further consideration.

[6]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

[7]Mexico and the United States questioned the institutional appropriateness of including in the convention language regarding the designating functions of the Secretary-General. The United States, further, reserved its position on both the procedural and financial implications of this article. The Russian Federation expressed the view that the question of designation of the Centre for International Crime Prevention would be best handled in the resolution submitting the draft convention to the General Assembly.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 33
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34. Implementation of the Convention

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Notes by the Secretariat

1. As indicated above, at the fourth session of the Ad Hoc Committee, the text of article 6 of the draft convention (article 11 of the final Convention) was revised on the basis of the summary of the Chairman of the Ad Hoc Committee (A/AC.254/L.37). In this context, paragraphs 1 to 3 of the text of article 6 contained in document A/AC.254/4/Rev.3 were combined and moved to a new article 23 ter reading as follows:

Rolling text (A/AC.254/4/Rev.4)

"[Article 23 ter
"Implementation of the Convention

"1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic legal system, to ensure the implementation of its obligations under this Convention.

"2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for the prevention and control of transnational organized crime.]"

Sixth session: 6-17 December 1999

Notes by the Secretariat

2. Delegations based their comments on the text of article 23 ter of the revised draft convention contained in document A/AC.254/4/Rev.5, which was the same as that contained in document A/AC.254/4/Rev.4.

Rolling text (A/AC.254/4/Rev.6)

"Article 23 ter
"Implementation of the Convention

"1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its

domestic legal system, to ensure the implementation of its obligations under this Convention.[1]

"2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for the prevention and combat of transnational organized crime."

Notes by the Secretariat

3. The article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

4. At the informal consultations held during the ninth session of the Ad Hoc Committee, it was indicated that discussion of this article might need to be reopened for the purpose of making adjustments that might be deemed necessary in order to accommodate concerns of federal States.

5. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 23 ter, as amended with the insertion of a new paragraph 2. The text of this paragraph was based on a proposal submitted by France at the tenth session of the Ad Hoc Committee (see A/AC.254/5/Add.26). France suggested that that provision should be inserted as a new paragraph 4 of article 2 of the draft convention on the scope of its application, to read as follows:

"(...) Paragraph 1 of this article shall not be construed as including the element of the transnational nature of an offence in the description of offences established under articles 3, 4, 4 ter and 17 bis or the element of the involvement of an organized criminal group in the description of offences established under articles 4, 4 ter and 17 bis."

According to that suggestion, the proposed new paragraph made it possible, without altering the scope of application of the draft convention, as defined in paragraph 1 of article 2, to indicate unequivocally that, while the existence of the elements of an offence's transnational nature and an organized criminal group's involvement was essential for the operation of the convention, such elements were not relevant to the establishment of the offences themselves. The United States suggested that the phrase "except to the extent that article 3 [*of the draft convention*] specifies involvement of an organized criminal group" also be added.

6. On the basis of these proposals the text of the proposed provision was reformulated and it was decided, as a compromise, to incorporate it as paragraph 2 in article 23 ter of the draft convention.

7. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

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[1]The formulation of this paragraph and in particular the provision concerning the "fundamental principles of its domestic legal system", required further consideration, including also in order to ensure consistency with other articles of the convention where such a provision was made and where the intent was the same.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 34
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

C. Interpretative note

The interpretative note on article 34 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 59) is as follows:

Paragraph 2

The purpose of this paragraph is, without altering the scope of application of the convention as described in article 3, to indicate unequivocally that the transnational element and the involvement of an organized criminal group are not to be considered elements of those offences for criminalization purposes. The paragraph is intended to indicate to States parties that, when implementing the convention, they do not have to include in their criminalization of laundering of criminal proceeds (article 6), corruption (article 8) or obstruction of justice (article 23) the elements of transnationality and involvement of an organized criminal group, nor in the criminalization of participation in an organized criminal group (article 5) the element of transnationality. This provision is furthermore intended to ensure clarity for States parties in connection with their compliance with the criminalization articles of the convention and is not intended to have any impact on the interpretation of the cooperation articles of the convention (articles 16, 18 and 27).

Article 35. Settlement of disputes

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 25
"Settlement of disputes[1]

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may at the time of ratification of or accession to this Convention declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

"3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to [the Secretary-General of the United Nations]."

Second session: 8-12 March 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 25 of the revised draft convention contained in document A/AC.254/4/Rev.1, which was the same as that contained in document A/AC.254/4.

[1]It was observed that consideration would need to be given to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627) in drawing up this article.

Rolling text (A/AC.254/4/Rev.2)

"Article 25
"Settlement of disputes[2]

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention [and its Protocols] that cannot be settled through negotiation within a reasonable time[3] shall, at the request of one of them, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Convention, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.[4]

"3. Any State Party that has made a reservation[5] in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

Sixth session: 6-17 December 1999

Notes by the Secretariat

2. The version of article 25 contained in document A/AC.254/4/Rev.2 remained the same in the intermediate drafts of the convention (A/AC.254/4/Revs.3-5).

Rolling text (A/AC.254/4/Rev.6)

"Article 25
"Settlement of disputes

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention and its Protocols that cannot be settled through negotiation within a reasonable time [ninety days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for

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[2]Some delegations proposed that article 32 of the 1988 Convention would be a more appropriate model for this article, in that it referred not simply to negotiation and arbitration, but in greater detail to "negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their [the Parties'] own choice". Other delegations, however, essentially supported the present formulation, since it was based on the 1997 International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex), which was more recent than the 1988 Convention.

[3]Some delegations were of the view that the term "reasonable time" was ambiguous.

[4]One delegation noted that the issue of a declaration would apply only to cases involving the compulsory settlement of disputes. Some delegations proposed that paragraphs 2 and 3 of article 25, together with the appropriate paragraphs from article 26, should be placed in a separate article on reservations. Other delegations, however, noted that reservations in respect of the resolution of conflicts were an issue that should be kept in article 25, separate from the issue of reservations in general.

[5]One delegation proposed that the word "reservation" should be replaced with the word "declaration".

arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Convention, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

"3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."[6]

Ninth session: 5-16 June 2000

Notes by the Secretariat

3. The version of article 25 contained in document A/AC.254/4/Rev.6 remained the same in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 25[7]
"Settlement of disputes

"1. States Parties shall endeavour to resolve disputes concerning the interpretation or application of this Convention through negotiation.

"2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"3. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 2 of this article. 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.

"4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

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[6]At its sixth session, on the recommendation of the Chairman, the Ad Hoc Committee requested the Secretariat to propose a formulation for this article that would be consistent with the wording of other United Nations conventions.

[7]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

Notes by the Secretariat

4. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 25, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 35
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. 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.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

C. Interpretative note

The interpretative note on article 35 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 60) is as follows:

Paragraph 1

The term "negotiation" is to be understood in a broad sense to indicate an encouragement to States to exhaust all avenues of peaceful settlement of disputes, including conciliation, mediation and recourse to regional bodies.

Article 36. Signature, ratification, acceptance, approval and accession

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 26
"Signature, ratification, accession and reservations

"1. This Convention shall be open to all States for signature from [...] to [...], and thereafter at the Headquarters of the United Nations in New York until [...].

"2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"3. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.

"4. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.[1]

"5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

"6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with [the Secretary-General of the United Nations]."

Second session: 8-12 March 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 26 of the revised draft convention contained in document A/AC.254/4/Rev.1, which was the same as that contained in document A/AC.254/4.

[1]It was suggested that paragraphs 3 to 5 were not appropriate. The observation was also made that in order to ensure that reservations could not be made, an express provision to that effect was required. Otherwise, general international law on treaties (and in particular the Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, No. 18232)) would nonetheless allow reservations to be made. Other delegations expressed their strong preference for an article that would specifically allow for reservations.

Rolling text (A/AC.254/4/Rev.2)

"Article 26
"Signature, ratification, acceptance, approval, accession and reservations

"1. This Convention shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. The present Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"[3. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.][2]

"[4. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.]

"[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

"6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

Sixth session: 6-17 December 1999

Notes by the Secretariat

2. The version of article 26 contained in document A/AC.254/4/Rev.2 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.3-5).

Canada (A/AC.254/L.114)

Canada proposed that the following text should be inserted in article 26 in place of the existing text, within square brackets, of paragraphs 3, 4 and 5:

"3. No reservations may be made in respect of any provision of this Convention."

[2]Further to the comments of delegations highlighted in footnote 1, it should be mentioned that some delegations proposed that paragraphs 3 to 5 should be placed in a separate article. One delegation proposed for consideration the possibility that only some provisions of the convention would be subject to reservations. Finally, some delegations noted that the issue of reservations could not be decided until the contents of the convention had been decided. It was therefore decided to place paragraphs 3 to 5 in square brackets for the time being.

Colombia (A/AC.254/L.126)

Paragraph 4

Colombia proposed that the wording of paragraph 4 of article 26 should be amended to read as follows:

"4. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1965."

Rolling text (A/AC.254/4/Rev.6)

"Article 26
"Signature, ratification, acceptance, approval, accession and reservations

"1. This Convention shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. The present Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"Option 1

"[3. No reservations may be made in respect of any provision of this Convention.]

"Option 2

"[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.][3]

"[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

"[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

"6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

[3]At the sixth session of the Ad Hoc Committee, there was discussion as to whether reservations would be permitted. It was agreed that the issue of reservations could not be settled until the contents of the convention had been decided upon. The Ad Hoc Committee agreed to place the two options in the text in order to facilitate further consideration of this issue. Some delegations proposed that the possibility of a third option, according to which reservations would not be permitted for certain articles of the convention, should be kept in mind. In the earlier versions of the draft convention (A/AC.254/4 and Rev.1-5), a provision that was relevant to this possible option had been included as paragraph 4, namely: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

Ninth session: 5-16 June 2000

Notes by the Secretariat

3. The version of article 26 contained in A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 26[4]
"Signature, ratification, acceptance, approval, accession and reservations

"1. This Convention shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. The present Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"3. This Convention is open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.[5]

"Option 1

"[4. No reservations may be made in respect of any provision of this Convention.]

"Option 2

"[4. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.][6]

"[5. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

"[6. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]"

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[4]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

[5]The observer for the European Commission indicated his intention to submit to the Ad Hoc Committee at its tenth session a proposal for an accession clause that would allow the European Community to accede to the convention and its protocols.

[6]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was agreed that a final decision on whether reservations would be permitted would be reached once the contents of the other provisions of the convention had been finalized.

Tenth session: 17-28 July 2000

European Commission (A/AC.254/L.217)

The European Commission proposed the following concerning article 26:

1. Add the following new paragraph after paragraph 1:

"(...) This Convention shall be also open for signature by regional economic integration organizations provided that at least one member State of such organization has signed the Convention in accordance with paragraph 1."

2. The following text should be added at the end of paragraph 2:

"A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In this instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by the Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence."

3. Paragraph 3 should be amended to read as follows:

"3. This Convention is subject to accession by any State or any regional economic integration organization of which at least one member State is a Party to the Convention. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

4. The words "to all States" should be replaced with the words "to all States Parties" in paragraph 5.

5. The word "States" should be replaced with the words "States Parties" in paragraph 6.

Notes by the Secretariat

4. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 26, as amended, without including a provision on reservations. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 36
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

C. Interpretative note

The interpretative note on article 36 of the convention approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 61) is as follows:

While the convention has no specific provision on reservations, it is understood that the Vienna Convention on the Law of Treaties of 1969[7] applies regarding reservations.

[7]United Nations, *Treaty Series*, vol. 1155, No. 18232.

Article 37. Relation with protocols

A. Negotiation texts

Second session: 8-12 March 1999

Rolling text (A/AC.254/4/Rev.2)

"[Article 26 bis
"Relation with Protocols[1]

"1. This Convention may be supplemented by one or more Protocols.

"2. In order to become a Party to a Protocol, a State must also be a Party to the Convention.

"3. A State Party to the Convention is not bound by a Protocol unless it has expressly accepted the Protocol.

"4. Any Protocol by which a State Party is bound shall, for that State Party, form an integral part of this Convention.]"

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. The version of article 26 bis contained in document A/AC.254/4/Rev.2 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.3-5).

Rolling text (A/AC.254/4/Rev.6)

"[Article 26 bis
"Relation with Protocols[2]

"1. This Convention may be supplemented by one or more Protocols.

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[1]Paragraphs 1 to 3 of article 26 bis were based on a proposal by Australia (A/AC.254/L.13) and paragraph 4 was proposed by Poland (see A/AC.254/5/Add.3). Several delegations noted their support for the approach reflected in these proposals. However, several delegations recalled that in paragraph 18 of the report of the Ad Hoc Committee on its first session (A/AC.254/9) it had been noted that, as the additional international legal instruments might require a broad scope, the possibility could not be excluded that they might be independent from the convention.

[2]At the sixth session of the Ad Hoc Committee there was considerable discussion regarding whether a provision governing the relationship between the convention and the protocols should be included in the text of the convention or only in the text of each of the protocols. The Ad Hoc Committee was of the view that decisions on this matter and on the formulation of the text would be made once the substantive provisions of the convention and the protocols had been finalized. The Ad Hoc Committee requested the Secretariat to provide it with clauses dealing with the same subject in other international instruments.

"2. In order to become a Party to a Protocol, a State must also be a Party to the Convention.

"3. A State Party to the Convention is not bound by a Protocol unless it becomes a Party to the Protocol in accordance with the provisions thereof.

"4. Any Protocol by which a State Party is bound shall, for that State Party, form an integral part of this Convention.]"

Ninth session: 5-16 June 2000

Notes by the Secretariat

2. The version of article 26 bis contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 26 bis[3]
"Relation with Protocols

"1. This Convention may be supplemented by one or more Protocols.

"2. In order to become a Party to a Protocol, a State must also be a Party to the Convention.

"3. A State Party to the Convention is not bound by a Protocol unless it becomes a Party to the Protocol in accordance with the provisions thereof.

"[4. Any Protocol by which a State Party is bound shall, for that State Party, form an integral part of this Convention.]"[4]

Tenth session: 17-28 July 2000

European Commission (A/AC.254/L.217)

Paragraph 2

"2. In order to become a Party to a Protocol, a State or a regional economic integration organization must also be a Party to the Convention."

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[3]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

[4]The Netherlands, while expressing preference for the deletion of the paragraph, proposed the following formulation, if the decision of the Ad Hoc Committee was to retain it: "Any Protocol to the present Convention shall be read and interpreted together with the present Convention."

Notes by the Secretariat

3. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 26 bis, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 37
Relation with protocols

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Notes by the Secretariat

4. A separate article on the relation of the convention "with other conventions" was also discussed in the context of the negotiation process up to the tenth session of the Ad Hoc Committee and was included in the corresponding drafts of the convention (as article 24). Finally, at the tenth session of the Ad Hoc Committee, it was decided that this article should be deleted. However, the objective of the present publication is to provide a complete picture of the negotiations on the content of the convention, irrespective of which provisions were finally included in the approved text. For this reason, it has been considered appropriate to include the following presentation of the relevant drafts of article 24 and the discussions on its content that took place before the decision was made to delete the article.

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 24
"Relation with other conventions

"Option 1

"This Convention shall not prejudice the application of other United Nations conventions on criminal matters.[5]

[5]It was observed that this article might also have to address the relationship with bilateral and regional treaties.

"Option 2

"The provisions of the present Convention shall prevail over those of other United Nations conventions dealing with the same matters."

Second session: 8-12 March 1999

Notes by the Secretariat

5. Delegations based their comments on the text of article 24 of the revised draft convention contained in document A/AC.254/4/Rev.1, which was the same as that contained in document A/AC.254/4.

Rolling text (A/AC.254/4/Rev.2)

"Article 24
"Relation with other conventions[6]

"Option 1

"This Convention shall not prejudice the application of other United Nations conventions on criminal matters.

"Option 2

"The provisions of the present Convention shall prevail over those of other United Nations conventions dealing with the same matters.[7]

"Option 3

"No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, whether bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.

"Option 4

"1. The provisions of this Convention that relate to international cooperation will in no way affect the application of broader provisions of bilateral or multilateral

[6]The discussion on article 24 at the second session of the Ad Hoc Committee focused on options 1 and 2 of the article as presented in the revised draft convention (A/AC.254/4/Rev.1). Some delegations suggested that the article should deal not only with the relation between the present convention and other United Nations conventions, but also with its relation to bilateral and multilateral treaties and arrangements in general. It was also suggested that the article should specify the relation between protocols to the present convention and other international treaties and arrangements. A number of delegations expressed a preference for option 1 on the ground that States parties to existing bilateral and multilateral instruments often assumed obligations that went beyond those to be contained in the present convention and that States parties should continue to respect those obligations. Other delegations expressed a preference for option 2 on the ground that applying a number of agreements and conventions could lead to conflict. It was also suggested by one delegation that the issue of which convention would prevail could depend on the individual issue at hand. Other delegations suggested that any option under this article would have to be enriched and a differentiation would have to be made between the measures addressed. The Ad Hoc Committee agreed that the exchange of views on the article at its second session was only preliminary, since no decision should be made on the content of the article until the earlier, substantive articles of the convention had been discussed. A number of additional proposals were made for the formulation of article 24 and the Ad Hoc Committee decided that those proposals should be included as new options 3 and 4.

[7]One delegation noted that it could accept option 2 as the working text if the words "the same matters" were to be replaced with the words "organized crime".

agreements in force between States Parties. The other provisions of this Convention shall prevail over those provisions which deal with the same questions in other conventions already concluded under the auspices of the United Nations.

"2. States Parties may apply article[s] [...] of this Convention to other multilateral conventions to the extent agreed to by States Parties.[8]

"3. States Parties may conclude bilateral or multilateral agreements or arrangements with a view to facilitating the application of the principles and procedures of this Convention.

"4. States Parties may conclude bilateral or multilateral agreements or arrangements for the application of one or more provisions of this Convention to other forms of criminal behaviour."

Sixth session: 6-17 December 1999

Notes by the Secretariat

6. The version of article 24 contained in document A/AC.254/4/Rev.2 remained the same in the intermediate drafts of the convention (A/AC.254/4/Revs.3-5).

France (A/AC.254/L.123)

"Article 24
"Relation with other conventions

"1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.

"2. States Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

"3. If two or more Parties have already concluded an agreement or treaty in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect to that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international cooperation.[9]

"4. States Parties may conclude bilateral or multilateral agreements or arrangements for the application of one or more provisions of this Convention to other forms of criminal behaviour."[10]

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[8]This paragraph was originally paragraph 10 of article 2 and was moved to article 24 pursuant to a proposal by some delegations at the second session of the Ad Hoc Committee.

[9]Paragraphs 1 to 3 were based on article 39 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 of the Council of Europe (European *Treaty Series*, No. 141).

[10]This paragraph appeared as paragraph 4 of option 4 of article 24 in the text of the draft convention contained in document A/AC.254/4/Rev.5.

Rolling text (A/AC.254/4/Rev.6)

"Article 24
"Relation with other conventions

"1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning [special matters].[11]

"2. States Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

"3. If two or more Parties have already concluded an agreement or treaty in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect to that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, [if it facilitates international cooperation].[12]

"4. States Parties may conclude bilateral or multilateral agreements or arrangements for the application of one or more provisions of this Convention to other forms of criminal behaviour.

"[5. No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, whether bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.]"[13]

Ninth session: 5-16 June 2000

Notes by the Secretariat

7. The version of article 24 contained in document A/AC.254/4/Rev.6 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.7 and 8).

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[11]It was considered that this term was vague and should be replaced with an appropriate one.

[12]At the sixth session of the Ad Hoc Committee, many delegations felt that this phrase implied a value judgement, but that the text was silent as to who should make that judgement. It was therefore proposed that a better formulation should be found.

[13]This paragraph appeared as option 3 of article 24 in the text of the draft convention contained in document A/AC.254/4/Rev.5. It was retained at the request of the United States of America for further consideration. Japan requested that option 1 of article 24 of the text contained in document A/AC.254/4/Rev.5 should also be retained. Option 1 provided as follows: "This Convention shall not prejudice the application of other United Nations conventions on criminal matters."

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"[Article 24[14]
"Relation with other conventions[15]

"1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning [special matters].

"2. States Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

"3. If two or more Parties have already concluded an agreement or treaty in respect of a subject that is dealt with in this Convention or otherwise have established their relations with respect to that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention [, if it facilitates international cooperation].

"4. States Parties may conclude bilateral or multilateral agreements or arrangements for the application of one or more provisions of this Convention to other forms of criminal behaviour.

"[5. No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, whether bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.]"

Notes by the Secretariat

8. At the tenth session of the Ad Hoc Committee, it was decided that article 24 should be deleted (see A/AC.254/L.230/Add.1).

[14]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

[15]There was considerable discussion on the desirability and formulation of this article at the informal consultations held during the ninth session of the Ad Hoc Committee. The Chairman of the informal consultations requested a smaller group of interested delegations to consider the matter and make proposals. The working group indicated that the text of the article should be placed in square brackets, as it had envisaged the possibility of deleting it and taking up most of the issues covered therein in the *travaux préparatoires*. The working group also indicated that the latter part of paragraph 5 could be accommodated in article 19.

Article 38. Entry into force

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 27
"Entry into force[1]

"1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, acceptance, approval or accession.

"2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument."

Second session: 8-12 March 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 27 of the revised draft convention contained in document A/AC.254/4/Rev.1, which was the same as that contained in document A/AC.254/4.

Rolling text (A/AC.254/4/Rev.2)

"Article 27
"Entry into force

"1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...][2] instrument of ratification, acceptance, approval or accession.

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[1]The number of instruments of ratification foreseen in this article is the same as that required in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations, *Treaty Series*, vol. 1582, No. 27627). One delegation thought that 40 might be a more appropriate number.

[2]Some delegations proposed 20 as the appropriate number of ratifications, since this would make it possible for the convention to enter into force in a relatively brief period. Other delegations proposed that the number of ratifications required should be higher (for example, 40 to 60) in order to emphasize the global nature of the convention. One delegation noted that a low number of ratifications would be appropriate should it be possible to make reservations to the convention.

"2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument."

Notes by the Secretariat

2. The version of article 27 contained in document A/AC.254/4/Rev.2 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.3-8).

3. At the informal consultations held during the ninth session of the Ad Hoc Committee, the article was revised and recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session. There was a convergence of views on 40 ratifications as the number that adequately met all concerns.

Tenth session: 17-28 July 2000

Notes by the Secretariat

4. Delegations based their comments on the text of article 27 of the revised draft convention contained in document A/AC.254/4/Rev.9 and Corr.1, which was the same as that contained in A/AC.254/4/Rev.2.

European Commission (A/AC.254/L.217)

Paragraph 1

The European Commission proposed that the following sentence should be added at the end of paragraph 1:

"For the purposes of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization."[3]

Notes by the Secretariat

5. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 27, as amended, to reflect the final agreement on the required number of instruments of ratification, acceptance, approval or accession. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

[3]Text taken from article 36, paragraph 5, of the Convention on Biological Diversity (United Nations, *Treaty Series*, vol. 1760, No. 30619).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 38
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39. Amendment

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 28
"Amendment

"1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

"2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

"3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments that they have accepted."

Ninth session: 5-16 June 2000

Notes by the Secretariat

1. The version of article 28 contained in document A/AC.254/4 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.1-9).

Rolling text (A/AC.254/4/Rev.9 and Corr.1)

"Article 28[1]
Amendment

"1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Conference of the Parties for the purpose of considering and voting upon the proposal. Any amendment adopted by a majority of States Parties present and voting at the conference [shall be submitted to the General Assembly of the United Nations for approval].

"2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after it has been [approved by the General Assembly of the United Nations and] accepted by a two-thirds majority of the States Parties.

"3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments that they have accepted."

Tenth session: 17-28 July 2000

European Commission (A/AC.254/L.217)

The European Commission proposed to add the following new paragraph after paragraph 3:

"Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa."[2]

Notes by the Secretariat

2. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 28, as amended. The Russian Federation proposed that the phrase "after the expiry

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[1]This article was amended at the informal consultations held during the ninth session of the Ad Hoc Committee to bring it into line with article 23. At those informal consultations, the involvement of the General Assembly in amendments was questioned. The Ad Hoc Committee asked the Secretariat to inform it about the practice followed in other international conventions. The Secretary informed the Ad Hoc Committee that the research carried out by the Secretariat covered those conventions which had established conferences of parties and those which had not. He cited article 39 of the Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, No. 18232) which appeared to establish the rule regarding amendments, and mentioned as examples the Vienna Convention for the Protection of the Ozone Layer (United Nations, *Treaty Series*, vol. 1513, No. 26164) of 1985 (article 6), the Convention on Biological Diversity (United Nations, *Treaty Series*, vol. 1760, No. 30619 of 1992 (article 29), the Rome Statute of the International Criminal Court (United Nations, *Treaty Series*, vol. 2187, No. 38544) (article 121) and the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109) (article 23). None of those instruments foresaw a role for the Assembly in amendments and reserved this matter for the States parties. The Chairman of the informal consultations stated that delegations should further consider the matter in the light of the information provided by the Secretariat. In addition, he indicated that the issue of amendments might be connected with the number of ratifications that would be required for the entry into force of the convention.

[2]Text taken from article 31, paragraph 2, of the Convention on Biological Diversity.

of five years from the entry into force of this Convention" should be inserted in paragraph 1. The same delegation also suggested the inclusion in paragraph 1 of the phrase "the Conference of the Parties shall make every effort to achieve consensus on each amendment". A two-thirds majority was proposed by Colombia. All these proposals were supported by other delegations and finally approved. In addition, it was decided that the references to General Assembly approval mechanisms should be deleted and that the proposed amendment should be communicated to the States parties. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 39
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40. Denunciation

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 29"
Denunciation

"A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General."

Ninth session: 5-16 June 2000

Notes by the Secretariat

1. The version of article 29 contained in document A/AC.254/4 remained unchanged in the intermediate drafts of the convention (A/AC.254/4/Revs.1-8).

Rolling text A/AC.254/4/Rev.9 and Corr.1)

"Article 29[1]
"Denunciation

"1. A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General."

"2. The denunciation of the present Convention pursuant to paragraph 1 of this article shall entail the denunciation of the Protocols thereto."

Tenth session: 17-28 July 2000

European Commission (A/AC.254/L.217)

The European Commission proposed to add the following new paragraph after paragraph 1:

[1]This article was revised at the informal consultations held during the ninth session of the Ad Hoc Committee and was recommended by the Chairpersons of the informal consultations to the Ad Hoc Committee for consideration at its tenth session.

"A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it."

Notes by the Secretariat

2. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 29, as amended. The last amendments are reflected in the final text of the convention, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 40
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41. Depositary and languages

A. Negotiation texts

First session: 19-29 January 1999

Rolling text (A/AC.254/4)

"Article 30
"Languages and depositary

"1. The Secretary-General of the United Nations is designated depositary of the present Convention.

"2. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

"IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention."

Notes by the Secretariat

1. The content of this article was not modified throughout the sessions of the Ad Hoc Committee. At its sixth session, the Ad Hoc Committee requested the Secretariat to propose language for articles 28 to 30 that would be in line with standard treaty practice. At its tenth session, the Ad Hoc Committee considered, finalized and approved article 30 as reflected in the final text of the convention, included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex I), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex I)

Article 41
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Part Two

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the United Nations Convention on Transnational Organized Crime

"The States Parties to this Protocol,

"*(a) Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as 'the Convention'),

"*(b) Gravely concerned* by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons,

"*(c) Believing* that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

"*(d) Declaring* that effective action to combat international trafficking in persons, particularly women and children, requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking,

"*(e) Considering* the need to punish traffickers and to protect victims of trafficking in persons, including by protecting internationally recognized human rights,

"*(f) Concerned* that, in the absence of a modern, universal instrument on such matters, persons who are vulnerable to such trafficking will not be sufficiently protected,

"*(g) Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

"*(h) Convinced* that an international instrument against trafficking in persons, particularly women and children, would be useful in combating such crime,

"*(i) Taking into account* the provisions of the Convention,

"Have agreed as follows:"

Argentina (A/AC.254/8)

"Draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime

"Preamble

"The States Parties to this Agreement,

"*Considering* the need to supplement the provisions of the Convention against Transnational Organized Crime by the adoption of an agreement that deals in particular with international trafficking in women and children,

"*Aware* that international trafficking in women and children constitutes a universal concern,

"*Bearing in mind* that these two categories of person are more vulnerable than men to the risk of being victims of certain types of illicit acts,

"*Bearing in mind also* that, while there is a wide variety of international legal instruments containing provisions aimed at combating sexual exploitation of women and children, in particular the Convention on the Rights of the Child[1] and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,[2] there is no such instrument whose specific objective is to deal with the problem of international trafficking in children for any purpose or of trafficking in both categories of person by criminal organizations,

"*Convinced* of the need to establish an agreement for the prevention, suppression and punishment of these forms of illegal conduct,

"*Reaffirming* the importance of international cooperation in the effective prevention and suppression of unlawful acts of this kind,

"Adopt the following Protocol:"

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime[3]

"The States Parties to this Protocol,

"*Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as the 'Convention'),

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[1]United Nations, *Treaty Series,* vol. 1577, No. 27531.

[2]Ibid., vol. 96, No. 1342.

[3]The proposal was submitted by Argentina and the United States of America pursuant to the commitment they undertook at the first session of the Ad Hoc Committee (see A/AC.254/9). It superseded the proposal submitted by the United States (A/AC.254/4/Add.3) and that submitted by Argentina (A/AC.254/8) and took into account comments made on those two proposals at the first session of the Ad Hoc Committee (see in particular the comments submitted by Australia and Canada contained in document A/AC.254/5/Add.3).

"*Gravely concerned* by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in [women and children] [persons],[4]

"*Believing* that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

"*Declaring* that effective action to combat international trafficking in [women and children] [persons, in particular women and children] requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such international trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

"*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the sexual exploitation of women and children, there is no universal instrument that addresses all aspects of trafficking in [women and children] [persons],

"*Concerned* that, in the absence of such an instrument, [women and children] [persons] who are vulnerable to trafficking will not be sufficiently protected,

"*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

"*Convinced* that supplementing the Convention with an international instrument for the prevention, suppression and punishment of trafficking in [women and children] [persons, in particular women and children,] will be useful in combating that crime,

"*Taking into account* the provisions of the Convention,[5]

"Have agreed as follows:"

Notes by the Secretariat

1. At the second session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime and during the first reading of the draft protocol,

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[4]The proposal by Argentina was restricted to trafficking in women and children. The proposal by the United States, while recognizing that women and children were particularly vulnerable to trafficking, applied to trafficking in all persons. Whenever this issue arose in this combined text, both options were given (see also note 1 by the Secretariat and footnote 7 below).

[5]Two delegations (Australia and Canada) noted that the protocol should also take into account work being done in other international forums (i.e. the proposed convention concerning the prohibition and immediate elimination of the worst forms of child labour, which was then being drafted by the International Labour Organization (ILO) (and was adopted on 17 June 1999 by the General Conference of ILO as the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour), as well as the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see A/AC.254/5/Add.3 and the report of the open-ended intersessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on its fifth session, held in Geneva from 25 January to 5 February 1999 (see E/CN.4/1999/74), as well as General Assembly resolution 54/263, by which the Assembly adopted the final text (annex II)).

there was discussion on whether the future protocol would address trafficking in women and children or trafficking in persons. Almost all countries expressed their preference for it to address all persons rather than only women and children, although particular attention should be given to the protection of women and children. In addition, the Secretariat was requested to clarify whether, by considering trafficking in persons, the Ad Hoc Committee would be departing from the mandate given to it by the General Assembly and, if that were the case, whether it would be competent to do so. The Secretariat undertook to explore the matter and to inform the Ad Hoc Committee of its findings (see A/AC.254/11, para. 22). The Secretariat consulted the Senior Legal Liaison Officer of the United Nations Office at Vienna and brought his response to the attention of the Ad Hoc Committee at its third session. According to the Senior Legal Liaison Officer, in its resolutions 53/111 and 53/114, both of 9 December 1998, the General Assembly had clearly defined the subjects for which new instruments were required. If the Assembly had wanted any other subjects to be included, it would have said so. Moreover, the recommendations of the Economic and Social Council (in its resolutions 1998/14 and 1998/20), which formed the basis for the Assembly resolutions, referred to trafficking in women and children and not to trafficking in persons. Those resolutions had been adopted unanimously and the terms used therein reflected the desires of the Assembly. If, however, the Ad Hoc Committee, after considering the issues before it, had come to the conclusion that, instead of developing an instrument addressing trafficking in women and children, it would be in the general interest to develop an instrument dealing with trafficking in persons, it might wish to request the Assembly to modify its mandate in that connection. States might take advantage for that purpose of the eighth session of the Commission, which was running in parallel to the third session of the Ad Hoc Committee (see A/AC.254/30, para. 34, and footnote 7 below).

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Revised draft Protocol to Prevent, Suppress and Punish[6] Trafficking in Persons, especially Women and Children,[7] Supplementing the United Nations Convention against Transnational Organized Crime[8]

"*The States Parties to this Protocol,*

"*Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as 'the Convention'),

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[6]Two delegations suggested that the protocol should focus on the prevention, investigation and prosecution of trafficking, leaving aside the question of punishment.

[7]The terms "persons, especially women and children" and "persons" are used throughout the draft text, as appropriate, in view of the action taken by the Commission on Crime Prevention and Criminal Justice at its eighth session (see also note 1 by the Secretariat above). In particular, the Commission recommended that the Economic and Social Council approve for adoption by the General Assembly a draft resolution entitled "United Nations Convention against Transnational Organized Crime and the protocols thereto", in which the Assembly would decide that the additional international instrument being prepared by the Ad Hoc Committee addressing trafficking in women and children should address trafficking in all persons, but especially women and children, and would also request the Ad Hoc Committee to make any corresponding changes to the draft instrument. In its resolution 54/126, the Assembly decided that the additional international instrument being prepared by the Ad Hoc Committee addressing trafficking in women and children should address trafficking in all persons, but especially women and children, and requested the Ad Hoc Committee to make any corresponding changes to the draft instrument (see A/AC.254/30, para. 34).

[8]Further to what is mentioned in footnote 3 above, the proposal contained in the present document takes into account comments made at the second session of the Ad Hoc Committee and also incorporates the amendments submitted by Argentina (A/AC.254/L.17). Some delegations suggested that the title of the protocol should also refer to the "protection of trafficked persons".

"*Gravely concerned* by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons,

"*Believing* that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

"*Declaring* that effective action to combat international trafficking in persons, especially women and children, requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such international trafficking, to punish[6] the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

"*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the sexual exploitation of women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

"*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

"*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

"*Convinced that* supplementing the Convention with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in combating that crime,

"*Taking into account* the provisions of the Convention,[9]

"Have agreed as follows:"

Notes by the Secretariat

2. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences submitted a position paper on the protection of human rights of trafficked persons, with particular reference to trafficked women (A/AC.254/CRP.13), in which she proposed the inclusion of the following paragraph in the preamble of the draft protocol:

"Bearing in mind the human rights protections set forth in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the Convention on the Rights of the Child,"

[9]Two delegations suggested that reference should be made to relevant conventions in the preamble to the draft protocol.

3. The Special Rapporteur on the sale of children, child prostitution and child pornography proposed that the preamble should contain a paragraph recognizing the vulnerability of children as distinct and separate from circumstances attendant upon the vulnerability of women, as well as reference to all pertinent human rights instruments, including the Convention on the Rights of the Child[10] and the 1980 Hague Convention on the Civil Aspects of International Child Abduction (see A/AC.254/CRP.19).

4. At the fifth session of the Ad Hoc Committee, Belgium, Poland and the United States submitted a reformulated version of the draft Protocol (A/AC.254/5/Add.13) at the request of the Chairman of the Ad Hoc Committee. At the informal consultations during the fifth session, it was suggested that that version be used in future negotiations (A/AC.254/19/Add.1, para. 17). One delegation suggested the words "especially women and children" should follow the word "persons" every time it appeared in the text.

5. At the sixth session of the Ad Hoc Committee, it was agreed to use the restructured text as the basis for further discussion of the draft protocol. At the same session of the Ad Hoc Committee, delegations noted that the words "each State Party" and "States Parties" were used interchangeably throughout the text of the draft protocol. It was agreed to use the words "States Parties".

6. Further to what is mentioned in footnote 9, Belgium proposed at the ninth session of the Ad Hoc Committee that the preamble to the draft protocol should also include reference to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others[11] (see A/AC.254/L.201).

7. At its eleventh session, the Ad Hoc Committee considered, finalized and approved the preamble, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Preamble:

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

[10]United Nations, *Treaty Series*, vol. 1577, No. 27531.

[11]Ibid., vol. 96, No. 1342

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

Notes by the Secretariat

1. On the discussion concerning the relationship between the future protocol, as well as the other two future protocols, and the future convention against transnational organized crime, see article 37 of the convention in part one.

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 7
"Other provisions[1]

"The provisions of articles [...] to [...] of the Convention shall also apply mutatis mutandis to this Protocol."

Notes by the Secretariat

2. The version of article 7 contained in document A/AC.254/4/Add.3/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.1-7).

[1]Pursuant to article 7, many of the provisions of the convention would be applicable to this protocol. It will be necessary to ensure, once the language of the convention is finalized, that any necessary modifications to the language of the convention are encompassed by the mutatis mutandis language in article 7. If it is determined that the corresponding provisions in the convention are not broad enough to meet the needs of the protocol, then additional provisions will need to be added to the protocol. The provisions in the convention on, for example, extradition and mutual legal assistance, protection of witnesses, measures to enhance cooperation with law enforcement authorities and law enforcement cooperation should be applicable to the subject matter of the protocol. If it is determined that the provisions of the convention on these issues are not adequate to cover the needs of the protocol, then additional articles should be added to the protocol.

Eleventh session: 2-28 October 2000

France (A/AC.254/L.245)

"Article (...)
"Relation to the United Nations Convention
against Transnational Organized Crime

"1. This Protocol supplements the United Nations Convention against Transnational Organized Crime, done on [...] in [...] (hereinafter referred to as 'the Convention'). It shall be interpreted together with the Convention.

"2. The offences established in accordance with article [...] of this Protocol shall be regarded as offences established in accordance with the Convention and the provisions of the Convention shall apply accordingly."

Recommendations of the informal working group on article 14, submitted at the request of the Chairperson (A/AC.254/L.249)

"Article 14
"Relation to the United Nations Convention
against Transnational Organized Crime

"1. This Protocol supplements the United Nations Convention against Transnational Organized Crime, done in [...] on [...] (hereinafter referred to as 'the Convention'). It shall be interpreted together with the Convention.

"2. The offences established in accordance with article 3 of this Protocol shall be regarded as offences established in accordance with the Convention. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol."

Rolling text (A/AC.254/L.253)

Proposal submitted by the Chairperson

"New article

"Article (...)[2]
"Relation to the United Nations Convention
against Transnational Organized Crime

"1. This Protocol supplements the United Nations Convention against Transnational Organized Crime, done in [...] on [...] (hereinafter referred to as 'the Convention').[3] It shall be interpreted together with the Convention.

[2]Once approved, this article would be incorporated into all three protocols. The placement of this article in the protocols would be discussed at a later time.

[3]The consistency group would examine the question of whether the text to appear in square brackets is needed and, if so, how it should be worded.

"2. The provisions of the Convention shall apply to this Protocol, mutatis mutandis, unless otherwise provided in this Protocol.

"3. The offences established in accordance with article 3 of this Protocol shall be regarded as offences established in accordance with the Convention."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 14, as amended. The article, which had appeared previously in chapter IV, was relocated to chapter I (General provisions). The amendments are reflected in the final text of the Protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

4. It should be noted that the representative of Japan requested that the report of the Ad Hoc Committee on its eleventh session should reflect his view that there were some provisions of the convention that would not be applicable to the protocol. Examples of such provisions, at a minimum, were article 3 of the convention, since article 4 of the protocol provided otherwise; article 5 of the convention, since article 5, paragraph 2, of the protocol provided otherwise; articles 8 and 9 of the convention, since it was absolutely unnecessary to have these articles apply to the protocol; and articles 35 to 41 of the convention, since articles 15 to 20 of the protocol provided otherwise.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

I. General provisions

Article 1
Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

C. Interpretative note

The interpretative note on article 1 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 62) is as follows:

Paragraph 2

This paragraph was adopted on the understanding that the words "mutatis mutandis" meant "with such modifications as circumstances require" or "with the necessary modifications". Provisions of the United Nations convention against transnational organized crime that are applied to the protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the protocol as in the convention.

Article 2. Statement of purpose

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 1
"Statement of objectives

"The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and prosecute trafficking in persons for the purpose of forced labour, prostitution or other sexual exploitation, giving particular attention to the protection of women and children, who are so often the victims of organized crime."

Argentina (A/AC.254/8)

"Article 1
"Objective

"1. The objective of this Protocol is the prevention, suppression and punishment of international trafficking in women and children.

"2. To that end, States Parties undertake:

"*(a)* To adopt effective measures, in conformity with their domestic law, for preventing and severely punishing members of criminal organizations whose aims include international trafficking in women or children, as defined in this Agreement;

"*(b)* To ensure the protection of women and children, in accordance with their best interests;

"*(c)* To adopt relevant penal and administrative provisions for the purpose of preventing, suppressing and punishing international trafficking in women and children;

"*(d)* To establish a system of judicial cooperation between States Parties that will facilitate the prosecution of unlawful acts connected with international trafficking in women and children;

"*(e)* To ensure the prompt return of children or women victims of trafficking to their country of habitual residence;

"*(f)* To prevent any type of penalty being imposed on women or children victims of international trafficking;

"*(g)* To progressively abolish those practices which allow husbands, families or clans to order the transfer of a woman to another person for payment or otherwise for the benefit of an international criminal organization;

"*(h)* To devote all means to guaranteeing victims appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary."

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 1
"Purpose

"1. The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and punish international trafficking in [women and children] [persons] for the purpose of forced labour or sexual exploitation [, giving particular attention to the protection of women and children, who are so often the victims of such trafficking[1]].

"2. [[2]To that end, [the purpose is, in particular, to encourage States Parties to undertake1]: [States Parties shall undertake:[1]]

"*(a)* To adopt effective measures [, in accordance with their domestic law,1] to prevent trafficking in [women and children] [persons], as defined in this Protocol, and punish severely those who engage in that activity;

"(b) To ensure that victims of trafficking in [women and children] [persons] receive appropriate protection;

"*(c)* To promote cooperation among States Parties in order to combat more effectively trafficking in [women and children] [persons];

"*(d)* To provide in appropriate cases for the safe and voluntary return of victims to their countries of origin or of habitual residence, or to a third country;

"*(e)* To inform and educate the public about the causes and consequences of trafficking in [women and children] [persons]; and

"*(f)* To provide victims with appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.]"

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 1[3]

"Option 1

"Purpose

"1. The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and punish[4] international trafficking in persons for

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[1]The language in square brackets was proposed in document A/AC.254/4/Add.3 (see above).

[2]The language in square brackets, beginning with "To that end" and ending with subparagraph *(f),* was proposed in document A/AC.254/8 (see above). The language may be unnecessary, as it repeats provisions found later in the protocol.

[3]At the second session of the Ad Hoc Committee, some Member States suggested the addition of a non-discrimination clause as a new article 1 of the protocol.

[4]At the second session of the Ad Hoc Committee, two delegations suggested that the protocol should focus on the prevention, investigation and prosecution of trafficking, leaving aside the question of punishment.

the purpose of forced labour or sexual exploitation,[5] paying particular attention to the protection of women and children,[6] who are so often the victims of such trafficking.

"2. The purpose is, in particular, to encourage States Parties to undertake:[7]

"*(a)* To adopt effective measures to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish severely those who engage in that activity;

"*(b)* To ensure that victims of trafficking in persons, especially women and children, receive appropriate protection;[8]

"*(c)* To promote cooperation among States Parties in order to combat more effectively trafficking in persons, especially women and children;

"*(d)* To provide in appropriate cases for the safe and voluntary[9] return of victims to their countries of origin or of habitual residence or to a third country;

"*(e)* To inform and educate the public about the causes and consequences of trafficking in persons; and

"*(f)* To provide victims with appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.[10]

"Option 2

"Purpose[11]

"1. The purpose of this Protocol is the prevention, suppression and punishment of international trafficking in persons, especially women and children.

"2. To that end, States Parties undertake:

"*(a)* To adopt effective measures, in accordance with their domestic law, to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish severely those who engage in that activity;

"*(b)* To ensure the protection of women and children, in accordance with their best interests;

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[5]At the second session of the Ad Hoc Committee, several countries expressed the view that the terms "sexual exploitation" and "forced labour" should be defined in the text. A number of countries supported a broad definition of both terms so as to ensure that the protocol would cover all forms of exploitation. Two delegations suggested that the definition of "forced labour" should include cases of "forced marriage" or "marriage of convenience". One delegation suggested further that the definition should cover cases of forced domestic work. Another delegation suggested the addition of the words "involuntary servitude" to the purpose of this protocol (see also articles 3 and 4 of the present protocol).

[6]At the second session of the Ad Hoc Committee, one delegation suggested that the words "regardless of the sex of the child" should be inserted after the word "children".

[7]At the second session of the Ad Hoc Committee, one delegation suggested that the principle of non-interference in domestic affairs should be reflected in an appropriate way.

[8]At the second session of the Ad Hoc Committee, one delegation suggested the addition of the words "where necessary" at the end of paragraph 2 *(b)* of article 1.

[9]At the second session of the Ad Hoc Committee, a number of countries suggested the deletion of the word "voluntary", if paragraph 2 was to be retained. At the first session, one delegation reminded the Ad Hoc Committee that if victims were returned to their countries of origin against their will, international law regarding refugees was applicable. At the second session of the Ad Hoc Committee, another delegation suggested that the protocol should ensure the protection of victims against deportation.

[10]At the second session of the Ad Hoc Committee, the delegations of a number of countries supported the deletion of paragraph 2 of article 1 as unnecessary, since it repeated provisions that appeared later in the draft protocol.

[11]The text of this article was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

"*(c)* To adopt relevant penal and administrative provisions for the purpose of preventing, suppressing and punishing international trafficking in persons, especially women and children;

"*(d)* To establish a system of judicial cooperation between States Parties that will facilitate the prosecution of unlawful acts connected with international trafficking in persons, especially women and children;

"*(e)* To inform and educate the public about the causes and consequences of trafficking in persons;

"*(f)* To prevent any type of penalty being imposed on persons, especially women and children, who are victims of international trafficking; and

"*(g)* To abolish progressively those practices which allow a husband, family or clan to order the transfer of a woman to another person for payment or otherwise for the benefit of an international criminal organization."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences suggested that the purpose of the protocol should include trafficking of persons into slavery-like conditions, in order to encompass trafficking for domestic work, forced marriages and forced motherhood, which were not traditionally encompassed under the term "forced labour". Furthermore, it was proposed that the protection of human rights of trafficked persons should be explicitly included as a primary purpose in paragraph 1 of the protocol and that the phrase "sexual exploitation" should be deleted, as the term was subject to a wide range of divergent interpretations, according to whether all activities in the sex industry constituted "sexual exploitation" per se or whether only sex work under exploitative or slavery-like conditions could qualify as "sexual exploitation" (see A/AC.254/CRP.13). The Special Rapporteur on the sale of children, child prostitution and child pornography highlighted that, as far as children were concerned, the phrase "for the purpose of forced labour or sexual exploitation" would run counter to article 35 of the Convention on the Rights of the Child, which called on States parties to prevent the abduction of, the sale of or traffic in children for any purpose and in any form (see A/AC.254/CRP.19; see also on this issue the comments submitted during the fourth session of the Ad Hoc Committee by the United Nations Children's Fund (UNICEF), A/AC.254/CRP.17) . In both of the aforementioned positions, grave concerns were expressed concerning the inclusion of the phrase "in accordance with their domestic law" in paragraph 2 *(a)* of option 2 of article 2. The deletion of the reference to sexual exploitation was further proposed by the International Labour Organization, which recommended amending the article to cover, as a minimum, trafficking in persons for the purpose of labour exploitation, in particular forced labour and serfdom (see A/AC.254/CRP.14).

2. At the fourth session of the Ad Hoc Committee, Lithuania suggested that the definition of the purpose of the protocol should exclude the regulation of the purpose of trafficking in persons, because such regulation would limit the scope of application of its provisions. Instead, it was suggested that the article should focus on the coercive (physical and psychological) nature of such trafficking, which is in effect the characteristic that determines the nature and degree of danger of the crime, helping to separate trafficking in persons from the smuggling of migrants (see A/AC.254/L.56).

Fifth session: 4-15 October 1999

Notes by the Secretariat

3. The version of article 1 contained in document A/AC.254/Add.3/Rev.2 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.3).

Rolling text (A/AC.254/4/Add.3/Rev.4)

"Article 1

"Option 1[12]

"Purpose

"1. The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and [prosecute] [punish][13] international trafficking in persons, particularly[14] for the purpose of forced labour or sexual exploitation, paying particular attention to the protection of women and children, who are so often the victims of such trafficking.

"2. The purpose is, in particular, to encourage States Parties to undertake:

"*(a)* To adopt effective measures to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish severely those who engage in that activity;

"*(b)* To ensure that victims of trafficking in persons, especially women and children, receive appropriate protection;

"*(c)* To promote cooperation among States Parties in order to combat more effectively trafficking in persons, especially women and children;

"*(d)* To provide in appropriate cases for the safe and voluntary return of victims to their countries of origin or of habitual residence or to a third country;

"*(e)* To inform and educate the public about the causes and consequences of trafficking in persons; and

"*(f)* To provide victims with appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.[15]

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[12]At the informal consultations held during the fifth session of the Ad Hoc Committee, the majority of the delegations reiterated their preference for this option. Several delegations suggested merging the first paragraphs of the two options together. The delegation of Argentina suggested that the first paragraphs should be merged to read as follows: "The purpose of this Protocol is the prevention, suppression and punishment of international trafficking in persons, especially women and children, and the promotion and facilitation of cooperation among States Parties to meet the objectives."

[13]At the informal consultations held during the fifth session of the Ad Hoc Committee, suggestions were made to replace the word "punish" with the word "prosecute" or "combat" or, alternatively, to insert the word "prosecute" before the word "punish".

[14]At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on broadening the purpose of the draft protocol. The delegations recommended adding the word "particularly" so that the protocol would not cover only forced labour and sexual exploitation.

[15]As indicated above, at the second session of the Ad Hoc Committee, a number of countries supported the view that paragraph 2 of article 1 was unnecessary and should be deleted, since it repeated provisions that appeared later in the draft protocol. At the informal consultations held during the fifth session of the Ad Hoc Committee, delegations agreed to return to this paragraph after the rest of the draft protocol had been discussed.

"Option 2

"Purpose

"1. The purpose of this Protocol is the prevention, suppression and punishment of international trafficking in persons, especially women and children.

"2. To that end, States Parties undertake:

"*(a)* To adopt effective measures, in accordance with their domestic law, to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish severely those who engage in that activity;

"*(b)* To ensure the protection of women and children, in accordance with their best interests;

"*(c)* To adopt relevant penal and administrative provisions for the purpose of preventing, suppressing and punishing international trafficking in persons, especially women and children;

"*(d)* To establish a system of judicial cooperation between States Parties that will facilitate the prosecution of unlawful acts connected with international trafficking in persons, especially women and children;

"*(e)* To inform and educate the public about the causes and consequences of trafficking in persons;

"*(f)* To prevent any type of penalty being imposed on persons, especially women and children, who are victims of international trafficking; and

"*(g)* To abolish progressively those practices which allow a husband, family or clan to order the transfer of a woman to another person for payment or otherwise for the benefit of an international criminal organization."

Seventh session: 17-28 February 2000

Notes by the Secretariat

4. Delegations based their comments on the text of article 1 of the revised draft protocol contained in document A/AC.254/4/Add.3/Rev.5, which was the same as that contained in document A/AC.254/4/Add.3/Rev.4.

Rolling text (A/AC.254/4/Add.3/Rev.6)

"I. Purpose, scope and criminal sanctions

"Article 1
"Purpose[16]

"The purpose of this Protocol is to prevent and combat [international][17] trafficking in persons, paying particular attention to the protection of women and children,

[16]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on adopting this new text as a basis for discussion and on deleting options 1 and 2 of this article contained in the previous text (see A/AC.254/4/Add.3/Rev.5) of the draft protocol. Some delegations suggested reversing the order of the sentence, moving the words "promotion and facilitation of cooperation" to the beginning.

[17]At the informal consultations held during the seventh session of the Ad Hoc Committee, discussion of whether to include the word "international" was deferred pending finalization of the corresponding provisions in the draft convention.

who are so often the victims of such trafficking,[18] and to promote and facilitate cooperation among States Parties to meet these objectives.[19]

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"I. Purpose, scope and criminal sanctions

"Article 1
"Purposes[20]

"The purposes of this Protocol are:

"*(a)* To prevent and combat [international] trafficking in persons, paying particular attention to the protection of women and children;[21] and

"*(b)* To promote and facilitate cooperation among States Parties in order to meet this objective."

Notes by the Secretariat

5. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 1, as amended on the basis of a proposal submitted by Azerbaijan (see A/AC.254/5/Add.36). A separate subparagraph *(b),* based in its initial form on a proposal submitted by Germany, was also included to cover the objectives of protection and assistance of victims of trafficking, as well as that of respect for their human rights. (In the same context, see also the note submitted by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, UNICEF and the International Organization for Migration at the eighth session of the Ad Hoc Committee (A/AC.254/27 and Corr.1), in which it was emphasized (para. 3) that the purpose of supporting and protecting the victims of trafficking, together with the purpose of eliminating trafficking, should be explicitly set out in the article.) The amendments are reflected in the final text of the draft protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

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[18]At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested that the words "women and children who are so often the victims of such trafficking" should be moved to the preamble.

[19]At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations suggested that this article should distinguish between the purposes of this protocol and the draft protocol against the smuggling of migrants by land, air and sea. One delegation suggested adding the words "all forms of exploitation".

[20]At the ninth session of the Ad Hoc Committee, this text was agreed subject to the outcome of the discussion on the bracketed word "international". It was restructured in order to indicate that the purposes referred to in subparagraphs *(a)* and *(b)* were equally important. Several delegations suggested including an additional subparagraph to deal with the protection of victims. The parallel text, contained in article 3, subparagraph *(c),* of the revised draft migrants' protocol (A/AC.254/4/Add.1/Rev.5), states (in square brackets): "To promote international cooperation in the interests of the protection of the victims of such trafficking and respect for their human rights."

[21]At the ninth session of the Ad Hoc Committee, there was general agreement to delete the words "who are so often the victims of such trafficking" after the words "women and children".

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 2
Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3. Use of terms

A. Negotiation texts

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. In the proposal submitted by Argentina on draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children (see A/AC.254/8), there was a separate provision on definitions. This provision is presented below under article 4 of the protocol (Scope of application), because the relevant negotiation texts of that article encompassed provisions on both the scope of application of the protocol and definitions.

2. At the informal consultations held during the fifth session of the Ad Hoc Committee, it was agreed to add a new article 2 bis, on definitions. It was further agreed to use the proposal submitted by the United States (A/AC.254/L.54) as the basis for the discussion on definitions (see A/AC.254/L.85/Add.2, paras. 17 and 28). The majority of the delegations suggested keeping the definitions general, defining the term "trafficking in persons" rather than the term "trafficking in children" or the term "trafficking in women". It was suggested by several delegations that the more specific terms could be defined at a later stage, if necessary. Several delegations suggested defining the term "child" in the article. Delegations were invited to suggest additional definitions to be included in the article.

Rolling text (A/AC.254/Add.3/Rev.4)

"Article 2 bis[1]
"Definitions

"For the purpose of this Protocol, the following definitions shall apply:

"*(a)* 'Sexual exploitation'[2] shall mean:

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[1]As indicated above, at the informal consultations held during the fifth session of the Ad Hoc Committee, consensus was reached on recommending to the plenary the addition of a new article on definitions in order to bring this draft protocol into line with the other draft protocols. One delegation suggested that all articles of the three draft protocols should be structured similarly. The terms defined in this article were based on a proposal by the United States (A/AC.254/L.54).

[2]The discussion on the definition of "sexual exploitation" at the informal consultations held during the fifth session of the Ad Hoc Committee was based on the proposal submitted by the United States (A/AC.254/L.54). Two delegations expressed reservations regarding the proposal. The Netherlands suggested replacing the definition of the term "sexual exploitation" with a definition of the term "slavery" that read as follows: "Slavery shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including forced prostitution and servitude and other practices similar to slavery as defined in article 1 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery." (United Nations, *Treaty Series,* vol. 266, No. 3822).

"(i) Of an adult, [forced][3] prostitution, sexual servitude or participation in the production of pornographic materials, for which the person does not offer herself or himself with free and informed consent;[4]

"(ii) Of a child, prostitution, sexual servitude or use of a child in pornography;[5, 6]

"*(b)* 'Forced labour'[7] shall mean all work or service extracted from any person under the threat [or][,] use of force [or coercion],[8] and for which the person does not offer herself or himself with free and informed consent [, except:

"(i) In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

"(ii) Any work or service not referred to in subparagraph *(b)* (i) of this article that is normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

"(iii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

"(iv) Any service extracted in cases of emergency or calamity threatening the life or well-being of the community;

"(v) Any work or service that forms part of normal civil obligations of the State concerned; or

"(vi) Minor communal services of a kind that, being performed by the members of a community in the direct interest of that community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives have the right to be consulted with regard to the need for such services]."[9]

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[3]At the informal consultations held during the fifth session of the Ad Hoc Committee, the majority of the delegations suggested deleting the word "forced". Several delegations also noted that it might be difficult for victims of prostitution to prove that they had been "forced". However, several delegations expressed the view that it was essential to distinguish victims of prostitution from those who had chosen to engage in prostitution.

[4]The proposal by the United States (A/AC.254/L.54) contained the phrase "for which the person does not offer herself or himself voluntarily", which was based on the wording in the Convention concerning Forced or Compulsory Labour (ILO Convention No. 29), article 2, paragraph 1. At the informal consultations held during the fifth session of the Ad Hoc Committee, consensus was reached on recommending the replacement of the word "voluntarily" with the words "with free and informed consent".

[5]At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested that the subject of paedophilia should be covered by the definition of the term "sexual exploitation". Alternatively, the subject of paedophilia could be included in a definition of the term "sexual servitude". The delegation suggested that the draft protocol should take into account the work being done on the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

[6]Prior to the fifth session of the Ad Hoc Committee, some delegations had suggested that there was a need to refer to "profit" as an element of trafficking in persons for the purpose of sexual exploitation. Other delegations had expressed the view that an explicit reference to profit was unnecessary and that the draft protocol should cover crime committed for its own sake. At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested again that there was a need to refer to profit as an element of trafficking in persons for the purpose of sexual exploitation.

[7]The discussion on the definition of the term "forced labour" at the informal consultations held during the fifth session of the Ad Hoc Committee was based on the proposal by the United States (A/AC.254/L.54).

[8]At the informal consultations held during the fifth session of the Ad Hoc Committee, several delegations suggested including the word "coercion", which in their view was a broader term than "force". Several delegations expressed reservations regarding the inclusion of the word "coercion".

[9]Both the International Covenant on Civil and Political Rights (United Nations, *Treaty Series,* vol. 999, No. 14668) and ILO Convention No. 29 specify exceptions to what is considered forced labour. Subparagraphs *(b)* (i) to (v) of the proposed text are virtually identical to article 8, paragraph 3 *(b)* and *(c),* of the International Covenant on Civil and Political Rights, which may provide a clearer and more up-to-date standard than ILO Convention No. 29. Subparagraph *(b)* (vi) is taken from article 2, paragraph 2 *(e),* of ILO Convention No. 29. Further consideration should be given to deciding whether it would be useful to include any exceptions to the term "forced labour", in particular if "trafficking in persons ... for the purpose of forced labour" is linked to the activities of an organized criminal group. At the informal consultations held during the fifth session of the Ad Hoc Committee, consensus was not reached on whether to retain these exceptions or not. Several delegations suggested deferring the question concerning these exceptions to the national legislation of the States parties to the protocol. It was agreed to recommend keeping the exceptions in brackets for further discussion.

Seventh session: 17-28 January 2000

Notes by the Secretariat

3. The version of article 2 bis contained in document A/AC.254/4/Add.3/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.5).

Rolling text (A/AC.254/4/Add.3/Rev.6)

"Article 2 bis
"Definitions

"Option 1

"For the purpose of this Protocol, the following definitions shall apply:

"*(a)* 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of abduction, force, fraud, deception or coercion,[10] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person [, with the aim of submitting them to any form of exploitation, as specified in article [...] of this Protocol];[11]

"*(b)* 'Sexual exploitation' shall mean:

"(i) Of an adult, [forced] prostitution, sexual servitude or participation in the production of pornographic materials, for which the person does not offer himself or herself with free and informed consent;

"(ii) Of a child, prostitution, sexual servitude or use of a child in pornography;

"*(c)* 'Forced labour' shall mean all work or service extracted from any person under the threat [or] [,] use of force [or coercion], and for which the person does not offer himself or herself with free and informed consent [, except:

"(i) In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

"(ii) Any work or service not referred to in subparagraph *(b)* (i) of this article that is normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

"(iii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

"(iv) Any service extracted in cases of emergency or calamity threatening the life or well-being of the community;

"(v) Any work or service that forms part of normal civil obligations of the State concerned; or

[10]See footnotes 4, 5 and 16 concerning article 4 of the present protocol.

[11]See footnote 17 concerning article 4 of the present protocol. This paragraph was moved from article 2 on the basis of a recommendation of the informal consultations held during the seventh session of the Ad Hoc Committee.

"(vi) Minor communal services of a kind that, being performed by the members of a community in the direct interest of that community, can therefore be considered normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives have the right to be consulted with regard to the need for such services].

"Option 2[12]

"For the purpose of this Protocol:

"*(a)* 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, coercion or the abuse of 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 [at a minimum][13] slavery, forced labour or servitude, including through sexual exploitation;[14]

"*(b)* 'Slavery' shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;[15]

"*(c)* 'Forced labour'[16] shall mean labour or services obtained through force or the threat of force, or the use of coercion, or through any scheme or artifice to defraud, including one where the status or condition results from a debt or contract made by that person and the value of the labour or services as reasonably assessed is not applied towards the liquidation of the debt or the fulfilment of the contract (i.e. debt bondage), or by any means or plan or pattern, including but not limited to false and fraudulent pretenses and misrepresentations, such that the person reasonably believes that he or she has no alternative but to perform the service;

"*(d)* 'Servitude' shall mean the status or condition of dependency of a person who is [unjustifiably] compelled by another person to render any service and who reasonably believes that he or she has no alternative but to perform the service;

"*(e)* 'Trafficking in persons' shall include recruitment, transportation, transfer, harbouring or receipt of any child,[17] or giving of payments or benefits to achieve the

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[12]This option was based on the first of two texts proposed by the informal working group convened at the request of the Chairperson during the informal consultations held at the seventh session of the Ad Hoc Committee. Footnotes 13 to 17 were drafted by the informal working group.

[13]All States parties would be required to criminalize trafficking for the purposes specified in the protocol. Two delegations wanted to ensure that the protocol would cover trafficking for other purposes, such as illegal adoption and trafficking in body organs.

[14]The informal working group concluded that there was no need to define the term "sexual exploitation" when used in this context.

[15]This language is from the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (United Nations, *Treaty Series,* vol. 266, No. 3822).

[16]One delegation proposed adding the words "debt bondage" to the definition of "forced labour" contained in the previous texts (A/AC.254/4/Add.3/Revs.4 and 5).

[17]Several delegations supported having a clear reference to trafficking in children for the purposes of prostitution, pornography and pornographic performances. This language follows the language of the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. An alternative way to criminalize trafficking in children might be to state that children could not consent to certain activities. One delegation, however, expressed concern that using a consent exception for some purposes could imply that consent could be given for other purposes. Several delegations also expressed concern that a consent exception for children would suggest that adults could consent to slavery, forced labour or servitude when, in fact, no person should consent to slavery, forced labour or servitude. The text in subparagraph *(e)* avoided this confusion by not using the word "consent".

consent of a person having control of a child, for the purpose of slavery, forced labour or servitude or for the purpose of using, procuring or offering a child for prostitution, for the production of pornography or for pornographic performances;

"*(f)* 'Child' shall mean any person under 18 years of age.

"Option 3[18]

"For the purpose of this Protocol, 'trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force or abduction, or by fraud, deception, [inducement,][19] coercion [or the abuse of authority][20] [, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person],[21] for the purpose of exploitation. Exploitation shall include, at a minimum,[22] sexual exploitation, forced labour or services, and debt bondage.[23]

Rolling text (A/AC. 254/4/Add.3/Rev.7)

"Article 2 bis
"Definitions[24]

"For the purposes of this Protocol:

"*(a)* 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, [inducement,][25] coercion or the abuse of 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 [, irrespective of the consent of

[18]This option was based on the second of two texts proposed by the informal working group convened at the request of the Chairperson during the informal consultations held at the seventh session of the Ad Hoc Committee. Footnotes 19 to 23 were drafted by the informal working group.

[19]The word "inducement" was put in square brackets because of a disagreement on its exact meaning. In addition, there was also disagreement on whether the word implied an element of force or coercion.

[20]The words "abuse of authority" were placed in square brackets because the exact meaning of the word "authority" was disputed. The word "authority" should be understood to include the power that male family members might have over female family members in some legal systems and the power that parents might have over their children.

[21]The words "or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person" were placed in brackets because some delegations were of the opinion that this would be covered by the other qualifiers, that is, force, fraud, deception, coercion and inducement.

[22]The words "at a minimum" will allow States parties to go beyond the offences listed in this definition in criminalizing. It was also intended to make it possible for the protocol to cover future forms of exploitation (i.e. forms of exploitation that were not yet known).

[23]One delegation suggested changing the order of words, so that the subparagraph would read as follows: "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, for the purpose of exploitation, by the threat or use of force or abduction, or by fraud, deception, [inducement,] coercion [or abuse of authority] [, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person]. Exploitation shall include, at a minimum, sexual exploitation, forced labour or services, and debt bondage."

[24]At the ninth session of the Ad Hoc Committee, there was consensus that the three previous options for this article should be replaced with this text, which was a consolidation of options 2 and 3 prepared by an informal working group (see A/AC.254/L.205 and A/AC.254/4/Add.3/Rev.6).

[25]At the ninth session of the Ad Hoc Committee, extensive discussion took place regarding the inclusion of the word "inducement".

the person];[26] exploitation shall include, at a minimum, [the exploitation of the prostitution of others or other forms of] sexual exploitation,[27] forced labour or services, slavery or practices similar to slavery, [the removal of organs for illicit purposes][28] [or servitude];[29, 30]

"[*(b)* When referring to a child, the conduct set forth above shall be considered 'trafficking in persons' even if threat or use of force, abduction, fraud, deception, coercion, abuse of power or the consent of a person having control over the child are not involved;]

"[*(c)* 'Servitude' shall mean the condition of a person who is unlawfully compelled or coerced by another to render any service to the same person or to others

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[26]At the ninth session of the Ad Hoc Committee, there was extensive discussion of whether a reference to the consent of the victims should be made in the definition of "trafficking in persons" and, if so, how it should be worded. Most delegations agreed that the consent of the victim should not, as a question of fact, be relevant to whether the victim had been "trafficked". However, many delegations expressed legal concerns about the effect of expressly excluding consent from a provision in which many of the means listed, by their nature, precluded the consent of the victim. Several expressed concern that an express reference to consent might actually imply that in some circumstances it would be possible to consent to such things as the use or threat of force, or fraud. Several delegations pointed out that proving lack of consent was difficult because the victim's consent or ability to consent often changed while the offence was ongoing. In trafficking cases, the initial consent of the victim was often withdrawn or vitiated by subsequent changes in circumstance and, in some cases, a victim abducted without consent might subsequently consent to other elements of the trafficking. There was agreement that both the protocol and legislation implementing it should reduce this problem for prosecutors and victims as much as possible. At the ninth session of the Ad Hoc Committee, no consensus was reached on the words "irrespective of the consent of the person" and the Chairperson asked delegations to consider the following options:

(a) The deletion of the words "irrespective of the consent of the person"; their replacement with a new subparagraph (*a* ter), proposed by the Chairperson (worded as follows: "The existence of any of the means set forth in subparagraph *(a)* of this article shall be considered as vitiating any alleged consent of a victim of trafficking"); and inserting in subparagraph *(a)* the words "by means of the threat or use of force" to clarify which "means" were referred to in new subparagraph (*a* ter);

(b) A proposal by Spain to amend the text in square brackets to read "irrespective of the initial consent of the victim";

(c) A proposal by Colombia to move the text in square brackets from this provision to paragraph 1 of article 3 (Obligation to criminalize);

(d) A proposal by Argentina to replace the article with the following text (original: Spanish):

"(...) For the purpose of this Protocol, 'trafficking in persons' shall mean their transfer under any circumstances, with or without their consent, for purposes of exploitation;

"(...) 'Exploitation' shall mean reduction to servitude, subjection to prostitution, slavery, forced labour or child pornography;

"(...) States Parties may take into account other forms of 'exploitation', in accordance with their domestic legal systems."

[27]At the ninth session of the Ad Hoc Committee, the text in square brackets was included at the proposal of Mexico for purposes of further discussion. At the request of one delegation, the Chairperson clarified that "exploitation" in this phrase distinguished between individuals who might derive some benefit from their own prostitution and those who derived some benefit from the prostitution of others. Two delegations requested that previous language should be referred to in a footnote for further consideration. The wording proposed by the informal working group that produced the text at the ninth session, as a compromise, was "use in prostitution" (see A/AC.254/L.205).

[28]At the ninth session of the Ad Hoc Committee, several of the delegations that supported listing forms of "exploitation" requested that such a list should include the removal of or trafficking in human organs, tissues or body parts and it was decided to include such a reference for purposes of further discussion. The wording was proposed by the Chairperson. Also proposed were the words "illicit removal of organs", "transfer of organs of persons for profit" and "trafficking in organs" and expanding the wording to include "other body parts". One delegation noted that, while trafficking in persons for the purpose of removing organs was within the mandate of the Ad Hoc Committee, any subsequent trafficking in such organs or tissues might not be. Another delegation noted that dealing with organ trafficking as such might make it necessary to develop additional measures, since the other provisions of the draft protocol dealt with trafficking in persons and not organs.

[29]At the ninth session of the Ad Hoc Committee, most delegations favoured including the reference to "servitude". Those opposed to the inclusion cited a lack of clarity as to the meaning of the term and duplication with the reference to "slavery or practices similar to slavery". It was also noted that, if the word "servitude" was to be deleted from this subparagraph, the definition of "servitude" in subparagraph *(c)* should also be deleted.

[30]At the ninth session of the Ad Hoc Committee, there was discussion of whether this provision should attempt to list specific forms of exploitation. A number of specific forms of exploitation were suggested and some delegations requested that those forms should be listed in a footnote for possible inclusion in the travaux préparatoires. The suggested forms of exploitation included the illicit removal of organs or other body parts or tissues, forced marriage, forced adoption, the purchase or sale of children and the making or distribution of child pornography. Whereas some delegations favoured listing them, others favoured the words "at a minimum" to ensure that unnamed or new forms of exploitation would not be excluded by implication.

and who has no reasonable alternative but to perform the service, and shall include domestic servitude and debt bondage;]

"*(d)* 'Child' shall mean any person under eighteen years of age."

Eleventh session: Vienna, 2-28 October 2000

Recommendations of the informal working group on article 2 bis, submitted at the request of the Chairperson (A/AC.254/L.238)

"Article 2 bis
"Definitions

"For the purposes of this Protocol,

"*(a)* 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force, by abduction, fraud, deception, the abuse of a position of vulnerability, such that the person has no real and acceptable alternative but to submit to the abuse involved, coercion or the abuse of 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, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery [, the removal of organs for illicit purposes] or servitude;

"(*a* bis) The existence of any of the means set forth in subparagraph *(a)* of this article shall be considered as vitiating any alleged consent of a victim of trafficking to the intended exploitation;

"*(b)* [Not discussed];

"[(c) [Deleted];]

"*(d)* [Not discussed]."

Recommendations of the informal working group on article 2 bis, submitted at the request of the Chairperson (A/AC.254/L.243)

"Article 2 bis
"Definitions

"For the purposes of this Protocol,

"*(a)* 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force, of abduction, of fraud, of deception, of coercion, of the abuse of power or of a position of vulnerability or of 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, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

"[(*a* bis) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* shall be irrelevant where any of the means set forth in subparagraph *(a)* are established.]"

Recommendations of the informal working group on article 2 bis, submitted at the request of the Chairperson (A/AC.254/L.248)

"Article 2 bis
"Definitions

"For the purposes of this Protocol,

"*(a)* 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force, of abduction, of fraud, of deception, of coercion, of the abuse of power or of a position of vulnerability or of 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, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

"[(*a* bis) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* shall be irrelevant where any of the means set forth in subparagraph *(a)* are established;]

"[*(b)* The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph *(a)* of this article;]

"(c) [Deleted.];

"*(d)* 'Child' shall mean any person under eighteen years of age."

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 2 bis, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

5. It should be noted that the representative of the Islamic Republic of Iran requested that the report of the Ad Hoc Committee on its eleventh session should indicate that his country had joined the consensus on article 3, subparagraph *(a),* of the protocol, but had registered a reservation regarding the inclusion of the expression "exploitation of the prostitution of others". That reservation was due to inconsistency with domestic law. The representative of the United Kingdom of Great Britain and Northern Ireland stated that his country had joined the consensus on article 3, subparagraph *(b),* but that it reserved its right to make an interpretative statement at the time of signing the protocol.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 3
Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of 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, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* of this article shall be irrelevant where any of the means set forth in subparagraph *(a)* have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph *(a)* of this article;

(d) "Child" shall mean any person under eighteen years of age.

C. Interpretative notes

The interpretative notes on article 3 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 63-68) are as follows:

Subparagraph (a)

(a) The reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.

(b) The protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms "exploitation of the prostitution of others" or "other forms of sexual exploitation" are not defined in the protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws.

(c) The removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation.

(d) Where illegal adoption amounts to a practice similar to slavery as defined in article 1, paragraph *(d),* of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery[31] it will also fall within the scope of the protocol.

[31]United Nations, *Treaty Series,* vol. 266, No. 3822.

Subparagraph (b)

(e) This subparagraph should not be interpreted as restricting the application of mutual legal assistance in accordance with article 18 of the convention.

(f) Subparagraph *(b)* should not be interpreted as imposing any restriction on the right of accused persons to a full defence and to the presumption of innocence. It should also not be interpreted as imposing on the victim the burden of proof. As in any criminal case, the burden of proof is on the State or public prosecutor, in accordance with domestic law. Further, reference should be made to article 11, paragraph 6, of the convention, which preserves applicable legal defences and other related principles of the domestic law of States parties.

Article 4. Scope of application

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 2
"Scope of application

"1. This Protocol shall apply to trafficking in persons as defined in paragraph 2 of this article.

"2. For the purposes of this Protocol, 'trafficking in persons' means the recruitment, transportation, transfer, harbouring or receipt of persons:

"*(a)* By the threat or use of kidnapping, force, fraud, deception or coercion; or

"*(b)* By the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of prostitution or other sexual exploitation or forced labour.

"3. For the purposes of this Protocol, trafficking in persons for the purpose of prostitution includes subjecting to such trafficking a child under the age of consent (in the jurisdiction where the offence occurs), regardless of whether that child has consented.

"4. The provisions of this Protocol shall not affect obligations under any national legislation or any treaty, bilateral or multilateral, which governs or will govern, in whole or in part, this subject matter."

Argentina (A/AC.254/8)

"Article 2
"Scope of application

"The provisions of this Agreement shall apply to any child or woman who is, or habitually resides, in a State Party at the time of commission of an act of international trafficking of which that person is a victim.

"Article 3
"Definitions

"For the purposes of this Agreement:

"*(a)* 'Child' shall mean any person under the age of 18 years;

"*(b)* 'International trafficking in children' shall mean any act carried out or to be carried out for an illicit purpose or aim, in a country other than that of the habitual residence of the child, by a criminal organization, jointly or through any of its members, that involves:

"(i) Promoting, facilitating or arranging the abduction, holding or concealment of a child, with or without his or her consent, whether or not for profit, and whether occasionally or repeatedly; or

"(ii) Offering, handing over or receiving a child in exchange for money or any other consideration in kind, or acting as an intermediary in any such acts;

"*(c)* 'International trafficking in women' shall mean any act carried out or to be carried out for an illicit purpose or aim by any individual or corporate entity in an organized manner, whether or not on behalf of another, whether or not for profit and whether occasionally or repeatedly, that involves:

"(i) Promoting, facilitating, arranging, inciting or participating in the abduction, holding or concealment of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

"(ii) Transporting a woman to or facilitating her entry into another State;

"*(d)* 'Illicit purpose or aim' shall mean:

"(i) Reduction to slavery, servitude or other similar condition;

"(ii) Maintenance of the victim in such conditions in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the victim has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

"(iv) Any means of production, distribution or importation, in their present or future forms, of graphic or audiovisual materials focused on the sexual conduct of women or children or on the genitals of such persons;

"(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

"(vi) Facilitating, promoting or acting as an intermediary in acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether or not for payment or for the promise thereof, whether or not in accordance with a traditional or customary practice and with or without the use of threats or abuse of authority;

"(vii) Extraction of body organs or organic tissue."

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 2

"Option 1

"Scope of application

"1. This Protocol shall apply to trafficking in persons as defined in paragraph 2 of this article.

"2. For purposes of this Protocol, 'trafficking in persons' means the recruitment, transportation, transfer, harbouring or receipt of persons:

"*(a)* By the threat or use of kidnapping, force, fraud, deception or coercion, or

"*(b)* By the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation or forced labour.

"3. For purposes of this Protocol, trafficking in persons for the purpose of sexual exploitation includes subjecting to such trafficking a child under the age of consent in the jurisdiction where the offence occurs, regardless of whether that child has consented.[1]

"Option 2

"Definitions

"For the purposes of this Protocol, the following definitions shall apply:

"*(a)* 'Child' shall mean any person under eighteen years of age;

"*(b)* 'Trafficking in children' shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, that involves:

"(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a child, with or without his or her consent, for profit or otherwise, occasionally or repeatedly; or

"(ii) Offering, delivering or receiving a child in exchange for money or any other payment in kind, or serving as an intermediary in those acts;

"*(c)* 'Trafficking in women' shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, whether or not on behalf of another, whether or not for profit and whether occasionally or repeatedly, that involves:

"(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

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[1]Australia and Canada proposed that a new paragraph should be added after this paragraph to define the term "forced labour", perhaps by reference to existing international definitions such as the definition contained in the Convention concerning Forced or Compulsory Labour of 1930 (International Labour Organization Convention No. 29) (see A/AC.254/5/Add.3).

"(ii) Transporting a woman to or facilitating her entry into another State;

"*(d)* 'Illicit purpose or aim' shall mean:

"(i) Reduction to slavery, servitude or other similar condition;

"(ii) Maintenance of the victim in such conditions in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the victim has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

"(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

"(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

"(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

"(vi) Facilitating, promoting or acting as an intermediary in acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether or not for payment or for the promise thereof, whether or not in accordance with a traditional or customary practice and with or without the use of threats or abuse of authority; or

"(vii) Extraction of body organs or organic tissue."

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 2

"Option 1[2]

"Scope of application

"1. This Protocol shall apply to trafficking in persons as defined in paragraph 2 of this article.

"2. For the purposes of this Protocol, 'trafficking in persons'[3] means the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of kidnapping, force, fraud, deception or coercion,[4, 5] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation[6] or forced labour.[7]

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[2]At the second session of the Ad Hoc Committee, many delegations expressed their preference for this option. One delegation suggested merging the text of the two options.

[3]At the second session of the Ad Hoc Committee, some delegations suggested that the term "trafficking" should be defined in the text. The question was raised whether trafficking in persons would also include the transportation of a person within a State or whether it necessitated crossing an international border.

[4]At the second session of the Ad Hoc Committee, one delegation expressed concern that it would be difficult to prove "coercion" in practice.

[5]At the second session of the Ad Hoc Committee, one delegation suggested the insertion of the words "or debt bondage" between the words "coercion" and "or".

[6]At the second session of the Ad Hoc Committee, some delegations suggested that the term "sexual exploitation" should be defined in the text.

[7]At the second session of the Ad Hoc Committee, some delegations wished to ensure that all forms of exploitation were covered under this protocol. One delegation suggested the addition of the words "involuntary servitude" after the words "forced labour". Another delegation felt that any definition of exploitation needed careful examination and restriction. One delegation expressed its concern that a definition might end up being too broad, which in turn might hamper the implementation of the protocol. Some delegations suggested that the reference made in option 2, paragraph 2 *(d)* (vii), to extraction of body organs or organic tissue should be included in option 1, paragraph 2. One delegation suggested that the scope of application of the protocol should include pornographic material involving women or children, as referred to in option 2, paragraph 2 *(d)* (iv).

"3. For purposes of this Protocol, trafficking in persons for the purpose of sexual exploitation includes subjecting to such trafficking a child under the age of consent[8] in the jurisdiction where the offence occurs, regardless of whether that child has consented.

"Option 2

"Scope of application and definitions[9]

"1. The provisions of this Protocol shall apply to any child or woman who is, or habitually resides, in a State Party at the time of commission of an act of international trafficking of which that person is a victim.[10]

"2. For the purposes of this Protocol, the following definitions shall apply:

"*(a)* 'Child' shall mean[11] any person under eighteen years of age;

"*(b)* 'Trafficking in children' shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, that involves:

"(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a child, with or without his or her consent, for profit or otherwise, repeatedly or on one occasion; or

"(ii) Offering, delivering or receiving a child in exchange for money or any other payment in kind, or serving as an intermediary in those acts;

"*(c)* 'Trafficking in women' shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, whether on behalf of another or not, whether for profit or not and whether repeatedly or not, that involves:

"(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

"(ii) Transporting a woman to or facilitating her entry into another State;

"*(d)* 'Illicit purpose or aim' shall mean:

"(i) Reduction to slavery, servitude or other similar condition;

"(ii) Maintenance of a person in such a condition in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the person has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

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[8]At the second session, some delegations drew the attention of the Ad Hoc Committee to the fact that the concept of "age of consent" might not be in line with the Convention on the Rights of the Child (United Nations, *Treaty Series,* vol. 1577, No. 27531).

[9]At the second session of the Ad Hoc Committee, some delegations suggested that, if definitions were to be included in the protocol, they should be placed before the provision on its scope.

[10]The text of this paragraph was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

[11]At the second session of the Ad Hoc Committee, one delegation suggested replacing the words "shall mean" with the words "shall include".

"(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

"(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

"(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

"(vi) Promoting, facilitating or coordinating acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether for payment or not or for the promise thereof, whether in accordance with a traditional or customary practice or not and with or without the use of threats or abuse of authority; or

"(vii) Extraction of body organs or organic tissue."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences was of the view that the effective implementation of the goals of the protocol required the inclusion of a non-discrimination provision, in particular in favour of women, trafficked persons who were undocumented immigrants in the country of destination and formerly trafficked persons and sex workers. She proposed that "purchase" and "sale" should be included in the "action element" of trafficking, the term "kidnapping" replaced with the term "abduction", and the terms "abuse of authority" and "debt bondage" included in the "means element" of trafficking. In addition, it was highlighted that trafficking should be construed as a crime separate from its component parts and that the trafficking definition should require the movement or transport of a person to a community other than the one in which he (she) lived to ensure that the movement was sufficiently significant to render the person particularly vulnerable to exploitation (see A/AC.254/CRP.13). The International Labour Organization was in favour of option 2 of article 2, suggesting its expansion to include trafficking for labour exploitation, in particular forced labour and serfdom (see A/AC.254/CRP.14). The Special Rapporteur on the sale of children, child prostitution and child pornography stated that the proposed definition of "trafficking in persons" should distinguish between domestic and cross-border transportation and that, where children were concerned, trafficking would be inherently condemnable regardless of the purpose for which it was intended and, thus, the phrase "for the purpose of sexual exploitation or forced labour" should be deleted (A/AC.254/CRP.19). The United Nations High Commissioner for Human Rights was in favour of the definition of trafficking reflected in option 1, highlighting, at the same time, that a preferable and more accurate description of purposes would include reference to forced labour and/or bonded labour and/or servitude. Furthermore, the High Commissioner suggested that a definition of "trafficking in children" should be dealt with in a separate section, which should also include an acknowledgement that children had special rights under international law and that child victims of trafficking had special needs that must be recognized and met by States parties (see A/AC.254/16, paras. 12 and 13). (See also articles 2 and 3 of the present protocol.)

2. At the fourth session of the Ad Hoc Committee, Belgium proposed that the following phrase should be incorporated in paragraph 2 of option 1 after the word "coercion": "or through abuse of the particular vulnerability of an alien due to that person's illegal or precarious administrative status, or through the exercise of other forms

of pressure or abuse of authority such that the person has no real or acceptable choice but to submit to such pressures or abuse of authority" (see A/AC.254/L.57).

Fifth session: 4-15 October 1999

Notes by the Secretariat

3. The version of article 2 contained in document A/AC.254/4/Add.3/Rev.2 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.3).

Rolling text (A/AC.254/4/Add.3/Rev.4)

"Article 2

"Option 1[12]

"Scope of application

"1. This Protocol shall apply to [international][13] trafficking in persons as defined in paragraph 2 of this article.

"2. For the purposes of this Protocol, 'trafficking in persons'[14] means the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of abduction,[15] force, fraud, deception or coercion,[16] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, [with the aim of submitting them to any form of exploitation, as specified in article [...].[17]

"3. For purposes of this Protocol, trafficking in persons for the purpose of [sexual exploitation][18] includes subjecting to such trafficking a child under eighteen years of age,[19] regardless of whether that child has consented.[20]

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[12]At the second session of the Ad Hoc Committee, many delegations expressed their preference for this option. One delegation suggested merging the text of the two options. At the informal consultations held during the fifth session of the Ad Hoc Committee, the same discussion ensued and the majority of the delegations were in favour of deleting option 2. It was agreed to add new article 2 bis on definitions (see article 3 of the present protocol).

[13]At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on inserting the word "international" in square brackets in this paragraph. Many delegations were in favour of inserting the word in order to bring the scope of this draft protocol into line with that of the draft convention. However, some delegations expressed the view that the protocol should protect all persons and that the inclusion of the word would make its scope too limited. Several delegations also expressed the view that the term "international trafficking" should be defined in order to clarify what situations would be covered under the protocol.

[14]At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested moving this paragraph to article 2 bis (Definitions).

[15]At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on replacing the word "kidnapping" with the word "abduction".

[16]At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested including the subject of debt bondage in the text. Several delegations suggested that it was covered under the term "forced labour". Several other delegations suggested that it could be covered under another term defined in the draft protocol. There was no objection to the subject of debt bondage being covered under the draft protocol.

[17]At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on replacing the words "for the purpose of sexual exploitation or forced labour" with these words in square brackets.

[18]At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on placing the words "sexual exploitation" in square brackets so that the scope of this paragraph would not be limited to sexual exploitation. The delegations expressed the view that the exact wording should be agreed on at a later stage.

[19]At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on replacing the words "under the age of consent in the jurisdiction where the offence occurs" with the words "under eighteen years of age". One delegation suggested that the term "child" should be defined in new article 2 bis.

[20]At the informal consultations held during the fifth session of the Ad Hoc Committee, many delegations reiterated the view that consent was irrelevant when exploitation involved children.

"Option 2

"Scope of application and definitions

"1. The provisions of this Protocol shall apply to any child or woman who is, or habitually resides, in a State Party at the time of commission of an act of international trafficking of which that person is a victim.

"2. For the purposes of this Protocol, the following definitions shall apply:

"*(a)* 'Child' shall mean any person under eighteen years of age;

"*(b)* 'Trafficking in children' shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, that involves:

"(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a child, with or without his or her consent, for profit or otherwise, repeatedly or on one occasion; or

"(ii) Offering, delivering or receiving a child in exchange for money or any other payment in kind, or serving as an intermediary in those acts;

"*(c)* 'Trafficking in women' shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, whether on behalf of another or not, whether for profit or not and whether repeatedly or not, that involves:

"(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

"(ii) Transporting a woman to or facilitating her entry into another State;

"*(d)* 'Illicit purpose or aim' shall mean:

"(i) Reduction to slavery, servitude or other similar condition;

"(ii) Maintenance of a person in such a condition in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the person has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

"(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

"(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

"(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

"(vi) Promoting, facilitating or coordinating acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether for payment or not or for the promise thereof, whether in accordance with a traditional or customary practice or not and with or without the use of threats or abuse of authority;[21] or

"(vii) Extraction of body organs or organic tissue."[22]

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[21]At the informal consultations held during the fifth session of the Ad Hoc Committee, many delegations suggested retaining in the draft protocol the concept contained in subparagraph 2 *(c)* (vi).

[22]At the informal consultations held during the fifth session of the Ad Hoc Committee, many delegations suggested that this type of exploitation should be covered under the protocol.

Notes by the Secretariat

4. In a note submitted by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration (A/AC.254/27 and Corr.1), there was support for a revised version of the current option 1, which would make specific reference to trafficking as the recruitment, transportation, transfer or harbouring or receipt of any person for any purpose or in any form, including the recruitment, transportation, transfer or harbouring or receipt of any person by the threat or use of force or by abduction, fraud, deception, coercion or abuse of power for the purposes of slavery, forced labour (including bonded labour or debt bondage) and servitude (para. 4). In addition, it was stated that a separate definition of trafficking in children should include reference to the recruitment, transportation, transfer or harbouring or receipt of any child or the giving of any payment or benefits to achieve the consent of a person having control over a child for the purposes of slavery, forced labour (including bonded labour or debt bondage) and servitude, as well as for the purpose of using, procuring or offering a child for sexual exploitation, including the production of pornography, or for pornographic services (para. 5). (See also the discussion on articles 2 and 3 of the protocol.)

5. The version of article 2 contained in document A/AC.254/4/Add.3/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.5).

6. At the informal consultations held during the seventh session of the Ad Hoc Committee, a discussion on the insertion of the word "international" before the term "trafficking" was reiterated and there was general agreement on deferring the examination of the matter pending finalization of the corresponding provisions in the draft convention. In addition, there was general agreement on adopting a new text proposed by the United States (see A/AC.254/5/Add.19) as a basis for discussion and on deleting options 1 and 2 of the previous text. It was also agreed that the text of former article 2, paragraph 2, which defined "trafficking in persons", should be moved to article 2 bis of the draft protocol. The text proposed by the United States is reflected in the following draft of the protocol.

Rolling text (A/AC.254/4/Add.3/Rev.6)

"Article 2
"Scope of application

"This Protocol shall, except as otherwise provided herein, apply to the prevention and combating, as well as the protection of victims of, [international] trafficking in persons as defined in article 2 bis of this Protocol and [, when involving an organized criminal group,][23] as defined in article [...] of the Convention."

Notes by the Secretariat

7. After having approved the final text of the corresponding provisions of the convention, the Ad Hoc Committee considered, finalized and approved article 2 at its eleventh session. The amendments are reflected in the final text of the protocol, as

[23]At the informal consultations held during the seventh and ninth sessions of the Ad Hoc Committee, there was general agreement on deferring discussion of the words in square brackets pending finalization of the corresponding provisions in the draft convention.

included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 4
Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5. Criminalization

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 3
"Obligation to criminalize

"1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in article 2, paragraph 2, and shall impose penalties that take into account the grave nature of those offences.

"2. Each State Party shall also adopt such measures as may be necessary to establish as criminal offences under its domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:

"*(a)* Attempting to commit an offence set forth in article 2, paragraph 2;

"*(b)* Participating as an accomplice in an offence set forth in article 2, paragraph 2;

"*(c)* Organizing or directing others to commit an offence set forth in article 2, paragraph 2; or

"*(d)* In any other way contributing to the commission of an offence set forth in article 2, paragraph 2, by a group of persons acting with a common purpose; such contribution shall be intentional, regardless of whether it was made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the offence concerned.

3. The knowledge, intent or purpose required to combat an offence set forth in article 2, paragraph 2, or in paragraph 2 of this article may be inferred from objective factual circumstances."

Argentina (A/AC.254/8)

"Article 4
"Classification of offences

"States Parties shall undertake to classify as a criminal offence trafficking in women and children as defined in this Agreement. Attempts and participation in any

aspects of the offence (complicity or instigation) shall be punishable. States Parties shall also undertake to establish penalties for such offences in accordance with their gravity."

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 3
"Obligation to criminalize

"1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in [article 2, paragraph 2,] [article 2, paragraphs 2 and 3,][1] and shall impose penalties that take into account the grave nature of those offences.

"2. Each State Party shall also adopt such measures as may be necessary to establish as criminal offences under its domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:

"*(a)* Attempting to commit an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3];

"*(b)* Participating as an accomplice in the commission of an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3];

"*(c)* Organizing or directing others to commit an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3]; or

"*(d)* In any other way contributing to the commission, by a group of persons acting with a common purpose, of an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3]; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or criminal purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

"3. The knowledge, intent or purpose required to commit an offence set forth in [article 2, paragraph 2,] [article 2, paragraphs 2 and 3,] or in paragraph 2 of this article may be inferred from objective factual circumstances."

Fourth session: 28 June-9 July 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 3 of the revised draft protocol contained in document A/AC.254/4/Add.3/Rev.2, which was the same as that contained in document A/AC.254/4/Add.3/Rev.1.

[1]The reference to the conduct to be criminalized would depend on the choice to be made regarding the content of article 2.

Rolling text (A/AC.254/4/Add.3/Rev.3)

"Article 3
"Obligation to criminalize[2]

"1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in [paragraph 2] [paragraphs 2 and 3] of article 2 and shall impose penalties that take into account the grave nature of those offences.

"2. Each State Party shall also adopt such measures as may be necessary to establish as criminal offences under its domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:

"*(a)* Attempting to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2;

"*(b)* Participating as an accomplice in the commission of an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2;

"*(c)* Organizing or directing others to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2; or

"*(d)* In any other way contributing to the commission, by a group of persons acting with a common purpose, of an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or criminal purpose of the group or be made in the knowledge of the intention of the group to commit the offence concerned.

"3. The knowledge, intent or purpose required to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2 or in paragraph 2 of this article may be inferred from objective factual circumstances."[3]

Notes by the Secretariat

2. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences proposed that paragraph 1 should make reference not only to the adoption, but also to the enforcement of legislative measures in order to provide a safeguard against lax enforcement or non-enforcement of domestic anti-trafficking legislation. The Special Rapporteur also suggested the inclusion of a provision for charging traffickers with the crimes they committed in the course of trafficking, as well as a provision explicitly criminalizing State agents who actively or passively participated in the crime of trafficking (see A/AC.254/CRP.13). The International Labour Organization proposed that article 3 should include a provision so that traffickers could be prosecuted whatever the country from which they exercised their activities, on the basis of article 5 of the ILO Migrant Workers (Supplementary Provisions) Convention of 1975 (see A/AC.254/CRP.14).

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[2]At the fourth session of the Ad Hoc Committee, several delegations suggested that this article should be consistent with the relevant articles of the draft convention and the draft migrants protocol.

[3]At the fourth session of the Ad Hoc Committee, some delegations suggested that this subparagraph should be deleted, while others stated that it should be retained as the wording was used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

3. The version of article 3 contained in document A/AC.254/4/Add.3/Rev.3 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.4 and 5).

4. At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the square brackets throughout the text of the article.

5. At the informal consultations held during the seventh session of the Ad Hoc Committee, it was recommended that further discussion of paragraphs 2 and 3 of article 3 should be deferred pending finalization of the corresponding provisions of the draft convention.

Ninth session: 5-16 June 2000

Notes by the Secretariat

6. At the ninth session of the Ad Hoc Committee, delegations based their comments on the text of article 3 of the revised draft protocol contained in document A/AC.254/4/Add.3/Rev.6, which was the same as that contained in document A/AC.254/4/Add.3/Rev.3, differing only in that the text in square brackets was deleted and the words "of article 2" were replaced with the words "article 2 bis of this Protocol". It should be noted that the Ad Hoc Committee had already agreed to include a new article, article 2 bis, on definition issues (see article 3 of the present protocol).

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 3
"Obligation to criminalize

"1. States Parties shall adopt such measures as may be necessary to establish as criminal offences under their domestic law[4] the conduct set forth in article 2 bis of this Protocol and shall impose penalties that take into account the grave nature of those offences.

"2. States Parties shall also adopt such measures as may be necessary to establish as criminal offences under their domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:[5]

"*(a)* Attempting to commit an offence set forth in article 2 bis of this Protocol; and

"*(b)* Participating as an accomplice in organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in article 2 bis of this Protocol.[6]

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[4]At the ninth session of the Ad Hoc Committee, Colombia proposed that the words "irrespective of the consent of the person" should be deleted from subparagraph *(a)* of article 2 bis and that the words ", irrespective of the consent of the victim," should be inserted after the words "domestic law" in this article.

[5]At the ninth session of the Ad Hoc Committee, some delegations proposed inserting the words "when committed intentionally" in paragraph 1 or 2 or both.

[6]At the ninth session of the Ad Hoc Committee, there was general agreement to replace former subparagraphs *(b)* and *(c)* of this article with a merged text consistent with article 3, paragraph 1 *(b),* of the revised draft convention and to add the words "participating as an accomplice in" (see, however, note 7 by the Secretariat). There was also general agreement to delete subparagraph *(d)* on the basis that article 3, paragraph 1 *(a),* of the revised draft convention would apply to the protocol, mutatis mutandis.

"3. The knowledge, intent or purpose required to commit an offence set forth in article 2 bis of this Protocol may be inferred from objective factual circumstances."

Notes by the Secretariat

7. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 3, as amended on the basis of a proposal submitted by Azerbaijan (see A/AC.254/5/Add.36). According to that proposal, in paragraph 1, the words "such measures" should be replaced with the words "such legislative and other measures" and the words "where such conduct is intentional" should be added after the word "Protocol". Azerbaijan also proposed that, in subparagraph 2 *(b),* the phrase "participating as an accomplice in" should be deleted to avoid tautology. Finally, the Ad Hoc Committee approved the initial wording of paragraph 2 *(b)* and *(c),* as contained in document A/AC.254/4/Add.3/Rev.6. It was decided that paragraph 3 should be deleted and that the phrase "and shall impose penalties that take into account the grave nature of those offences" in paragraphs 1 and 2 should also be deleted. It was further decided that the phrase "under their domestic law" in paragraph 2 should be rephrased to read "subject to the basic concepts of … legal system" and moved to subparagraph 2 *(a).* The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

C. Interpretative notes

The interpretative notes on article 5 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 69 and 70) are as follows:

(a) The "other measures" mentioned here are additional to legislative measures and presuppose the existence of a law.

Paragraph 2

(b) References to attempting to commit the offences established under domestic law in accordance with this subparagraph are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also culpable or punishable under domestic law.

Protection of victims of trafficking in persons

Article 6. Assistance to and protection of victims of trafficking in persons

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 4
"Victims of trafficking in persons[1]

"1. Each State Party shall ensure that its legislative framework contains measures that permit, in appropriate cases:

"*(a)* Providing for the safe and voluntary return of victims of trafficking in persons to their countries of origin, their habitual residences or third countries;

"*(b)* Providing victims of such trafficking access to adequate procedures to seek:

"(i) Compensation for damages, including compensation coming from fines, penalties or forfeited assets of perpetrators of such trafficking; and

"(ii) Restitution from the offenders;

"*(c)* Providing:

"(i) Information to victims of such trafficking in regard to the relevant court and administrative proceedings; and

"(ii) Assistance to 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; and

"*(d)* Providing appropriate housing, education and care for detained children.

"2. Each State shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory. Each State Party shall consider implementing the following measures:

[1]States should consider whether this article should include a provision requiring States to accept the return of their nationals.

"*(a)* Providing immigration laws that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases;

"*(b)* Providing for the physical, psychological and social recovery of victims of and witnesses to trafficking in persons, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs."

Argentina (A/AC.254/8)

"Article 8
"Confidentiality of proceedings

"States Parties shall safeguard the interests of victims of international trafficking in women and children and take steps to ensure that the conduct of any proceedings instituted under this Agreement remain confidential at all times."

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 4
"Assistance for and protection of victims of trafficking[2]

"1. [In appropriate cases and to the extent possible under domestic law,[3] States Parties shall protect the privacy of victims by maintaining the confidentiality of legal proceedings related to trafficking in [persons] [women and children].

"2. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall ensure that its legislative framework contains measures that permit providing, in appropriate cases:

"*(a)* Information to victims of crimes covered by this Protocol with regard to the relevant court and administrative proceedings;

"*(b)* Assistance to 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; and

"*(c)* Appropriate housing, education and care for children in governmental custody.[4]

"3. Each State shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory."

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[2]Article 4 in document A/AC.254/4/Add.3, dealing with victims, was expanded into four separate articles (articles 4-7) in this draft, each addressing a different aspect of victim assistance.

[3]At the second session of the Ad Hoc Committee, it was suggested that the phrase "in appropriate cases" should be expanded to include reference to the domestic law of States parties.

[4]Australia and Canada expressed concern about the consistency of this clause with the Convention on the Rights of the Child (United Nations, *Treaty Series,* vol. 1577, No. 27531) (see A/AC.254/5/Add.3).

Rolling text (A/AC.254/4/Add.3/Rev.2)

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

"1. [In appropriate cases and to the extent possible under domestic law,] States Parties shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons.

"2. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall ensure that its legislative framework contains measures that permit providing, in appropriate cases:

"*(a)* Information to victims of crimes covered by this Protocol with regard to the relevant court and administrative proceedings;

"*(b)* Assistance to 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;

"*(c)* Appropriate housing, education and care for children in governmental custody; and

"*(d)* Appropriate housing, economic assistance, psychological, medical and legal support for the victims of crimes covered by this Protocol.[5]

"3. Each State shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, some delegations proposed additional provisions regarding the protection of victims of trafficking. Italy proposed amendments to articles 4 and 5 (see A/AC.254/L.30) and the inclusion of a non-discrimination clause under new article 3 bis. The Holy See (see A/AC.254/L.32) and Belgium (see A/AC.254/L.57) also proposed additional language for article 4. Some delegations reiterated their commitment to maintaining a balance between providing protection and assistance for trafficked persons on the one hand and law enforcement on the other. Some delegations suggested removing the square brackets from around the words "to the extent possible under domestic law". Other delegations stressed that it might not be possible to maintain confidentiality of legal proceedings as a general rule. However, some delegations stated that it might not be necessary to reword this subparagraph if the phrase in square brackets relating to domestic law was retained. Some delegations from developing countries expressed concern that the economic situation in their countries might make it difficult for their Governments to implement some of these provisions. Other delegations stressed the need to strengthen the protection of children under this protocol, in line with the Convention on the Rights of the Child.

[5]The text of this subparagraph was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

2. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences submitted a position paper, in which it was argued that the wording of paragraph 1 of article 4 was restrictive and allowed States parties to have discretion over whether or not to ensure the privacy and confidentiality of legal proceedings relating to trafficking in persons (see also on this point the concurring opinion of the United Nations High Commissioner for Human Rights, as reflected in document A/AC.254/16, para. 18). It was also proposed that paragraph 2 should be strengthened by deleting the phrases "in appropriate cases" and "ensure that its legislative framework contains measures that permit providing", so as to require States parties to provide directly the measures mentioned (along the same lines, see the comments of the United Nations High Commissioner for Human Rights (A/AC.254/16, para. 19)). In addition, it was suggested that a provision ensuring the right to pursue legal action against trafficking, as well as a provision ensuring the right for the trafficked persons to be informed of their legal rights, should be included in the text of the article. A further provision was proposed with a view to ensuring procedural protections for trafficked persons. As far as paragraph 3 of article 4 was concerned, the relevant proposals focused on strengthening the protection accorded to trafficked persons (deletion of the phrase "shall endeavour"), replacing the term "territory" with the term "jurisdiction" (for the purpose of including within the purview of the provision a trafficked person on the embassy grounds of a State party located in the territory of a State not party to the convention) and including a provision for ensuring protection against detention, imprisonment or prosecution of trafficked persons (on this last point, see also the comments of the United Nations High Commissioner for Human Rights (A/AC.254/16, para. 17)). The provision of measures aimed at protecting trafficked persons (and, where necessary, family members and friends) from intimidation, threats or reprisals was also suggested, including information regarding the status of proceedings against the trafficker and prohibition of public disclosure of trafficked persons' identities. The final suggestion was to include a provision granting access of trafficked persons to embassies and non-governmental organizations (for a more detailed analysis of the above-mentioned proposals, see document A/AC.254/CRP.13). At the same session of the Ad Hoc Committee, the International Labour Organization submitted a note (A/AC.254/CRP.14) arguing in favour of further elaborating the draft article in order to include the obligation for States parties to provide information to trafficked persons on their specific rights, the procedures available for claiming compensation and the availability of special support services. The need for ensuring protection against reprisals to those who legitimately exposed violations of the protocol or national legislation was also emphasized and it was suggested that reference might be made to special complaint procedures, simplification of legal administrative proceedings and the need of trafficked children for special assistance and protection. During the fourth session of the Ad Hoc Committee, the United Nations Children's Fund submitted comments focusing on the effective protection of trafficked children in the light of the safeguards arising from the Convention on the Rights of the Child (see A/AC.254/CRP.17).

3. The version of this article contained in document A/AC.254/4/Add.3/Rev.2 remained unchanged in the intermediate drafts of the protocol A/AC.254/4/Add.3/Revs.3 and 4).

4. At the informal consultations held during the fifth session of the Ad Hoc Committee, Belgium, Poland and the United States submitted a reformulated version of the draft protocol (A/AC.254/5/Add.13). At the sixth session of the Ad Hoc Committee, it was agreed that the restructured version should be used as the basis for further discussion. In that version, an additional paragraph, paragraph 4, was inserted in article 4. This paragraph appeared in the previous versions of the draft protocol as article 7, paragraph 1. The revised text of article 4 of the draft protocol read as follows:

Rolling text (A/AC.254/4/Add.3/Rev.5)

"II. Protection of trafficked persons

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

"1. [In appropriate cases and to the extent possible under domestic law,] States Parties shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons.

"2. States Parties shall ensure that their legislative frameworks contain measures that permit providing, in appropriate cases:

"*(a)* Information to victims of crimes covered by this Protocol with regard to the relevant court and administrative proceedings;

"*(b)* Assistance to 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;

"*(c)* Appropriate housing, education and care for children in government custody; and

"*(d)* Appropriate housing, economic assistance, psychological, medical and legal support for the victims of crimes covered by this Protocol.

"3. States Parties shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within their territories.

"4. States Parties shall ensure that their legislative frameworks contain measures that provide victims of trafficking in persons with access to adequate procedures for seeking:

"*(a)* Compensation for damages, including compensation coming from fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in persons; and

"*(b)* Restitution from the offenders."

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.3/Rev.6)

"II. Protection of trafficked persons

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

"1. In appropriate cases and to the extent possible under domestic law, States Parties shall protect the privacy [and identity][6] of victims of crimes[7] covered

[6]At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations proposed that specific reference should be made to protecting victims' identities. Other delegations expressed concerns that this would not be consistent with the right of accused persons to know the identity of their accusers or to mount a defence against criminal charges.

[7]At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations proposed that the words "victims" and "victims of crimes covered by this Protocol" appearing in various places in the text should be replaced by the words "trafficked persons". One delegation noted that the word "victims" might be interpreted as a reference to persons having the legal status of victims, whereas the term "trafficked persons" was broader and more inclusive.

by this Protocol by making legal proceedings relating to trafficking in persons confidential.[8]

"2. States Parties shall ensure that their legislative or administrative[9] frameworks contain measures that permit providing to victims of crimes covered by this Protocol, in appropriate cases:[10]

"*(a)* Information on the relevant court and administrative proceedings;

"*(b)* Assistance to enable 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.

"3. In appropriate cases and to the extent possible, States Parties shall consider implementing measures to provide for the physical and psychological recovery of victims covered by this Protocol and, in particular:

"*(a)* Appropriate housing;

"*(b)* Counselling and information, in the language that the trafficked persons can understand, in particular as regards their legal rights;

"*(c)* Medical, psychological and economic assistance; and

"*(d)* Employment, educational and training opportunities.[11]

"4. States Parties shall take into account, in applying the provisions of this article, the special requirements of children, including appropriate housing, education and care.[12]

"5. States Parties shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within their territories.[13]

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[8]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that the words "in appropriate cases and to the extent possible" should be retained without square brackets and that the words "making legal proceedings relating to trafficking in persons confidential" should be inserted at the end of the sentence to emphasize that open public legal proceedings were the norm but confidentiality should be applied to protect victims in appropriate cases.

[9]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that a reference to administrative frameworks should be included to allow for non-legislative compliance with this requirement.

[10]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that article 4, paragraph 2, of the previous text should be divided into two separate subparagraphs, the first containing former subparagraphs *(a)* and *(b)* and the second containing former subparagraphs *(c)* and *(d).* It was also agreed that the reference to victims should be moved from subparagraphs *(a)* and *(b)* to the chapeau of paragraph 2. Some delegations suggested that this provision might raise issues regarding the federal or regional division of powers for some countries and that it was linked to similar issues that were under discussion in the draft convention.

[11]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that subparagraphs *(a)* and *(b),* which were subparagraphs *(c)* and *(d)* of article 2 in the previous text (A/AC.254/4/Add.3/Rev.5), should be incorporated in a separate paragraph of a non-obligatory nature and that further amendments should be included as new subparagraphs *(c)* and *(d).* Some delegations suggested that a reference to essential medical care should be made in paragraph 2, the obligatory provision.

[12]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that this new paragraph should be added. During the eighth session of the Ad Hoc Committee, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration submitted a note in which the need for specifically protecting the rights and interests of trafficked children was emphasized (see A/AC.254/27 and Corr.1, paras. 6 and 9).

[13]At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested that the beginning of this paragraph should read "States Parties shall cooperate with each other". Another delegation suggested deleting this paragraph because it was unclear whether it would apply to victims only while they were involved in legal proceedings or for the entire duration of their stay in the receiving State.

"6. States Parties shall ensure that their legislative framework provides for measures that offer victims of trafficking in persons the possibility of[14] obtaining compensation for damage suffered."[15, 16]

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"II. Protection of trafficked persons

"Article 4[17, 18]
"Assistance for and protection of victims of trafficking in persons

"1. In appropriate cases and to the extent possible under domestic law, States Parties shall protect the privacy and identity of victims of crimes covered by this Protocol, including, inter alia, by making legal proceedings relating to trafficking in persons confidential.[19]

"2. States Parties shall ensure that their legislative or administrative frameworks contain measures that provide to victims of crimes covered by this Protocol, in appropriate cases:

"*(a)* Information on the relevant court and administrative proceedings;

"*(b)* Assistance to enable 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.

"3. [In appropriate cases and to the extent possible, States Parties shall consider implementing measures to provide for the physical and psychological recovery of victims covered by this Protocol and, in particular:][20]

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[14]At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested deleting the words "the possibility of" to make this paragraph obligatory. Other delegations, however, suggested inserting the words "to the extent possible" in this paragraph.

[15]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the text proposed by France as the basis for this paragraph. There was also general agreement that references to specific compensation methods in the previous text (A/AC.254/Add.3/Rev.5) should be replaced with a more general requirement that domestic law should provide victims with the means of seeking compensation.

[16]At the informal consultations held during the seventh session of the Ad Hoc Committee, China suggested adding a new paragraph to this article (see A/AC.254/5/Add.19).

[17]At the ninth session of the Ad Hoc Committee, the text of article 4, paragraphs 1, 2 and 6, was agreed to with the changes noted, paragraphs 4 and 5 were agreed to without changes and paragraph 3 was not agreed to.

[18]At the ninth session of the Ad Hoc Committee, several delegations suggested including the words "and witnesses" after the word "victims", noting that witnesses as well as victims were often placed in fear of their lives. A majority of delegations expressed the view that article 18 of the draft convention, entitled "Protection of witnesses", addressed the concerns of those delegations and that article 18 should apply, mutatis mutandis, to this protocol, where appropriate.

[19]At the ninth session of the Ad Hoc Committee, there was general agreement to retain the words "and identity" without square brackets and to add the words "including, inter alia," referring to confidential legal proceedings.

[20]At the ninth session of the Ad Hoc Committee, there was extensive discussion about the extent to which the chapeau of this paragraph should make implementation of the provisions of the paragraph mandatory or discretionary on the part of States parties. Consensus could not be reached and as a result this portion of the text was placed in square brackets for further consideration by delegations. The Chairperson asked delegations to reflect on their positions, noting that there had been extensive discussion of article 4 at the informal consultations held during the previous session and that a compromise—in which some obligations had been put under the mandatory language of paragraphs 1, 2 and 6, while others had been given a greater measure of flexibility under the other paragraphs—had only been reached with considerable effort at that time. The Chairperson and several delegations also noted that, as the obligations of the various paragraphs applied to all States parties, countries from which victims were trafficked and countries to which they were trafficked would be equally obliged to provide the various support measures. Several attempts at compromise were proposed. Mexico suggested that the words "in appropriate cases and to the extent possible" should be placed after the word "implementing" in order to clarify that the phrase qualified "implementing" and not "consider". Bangladesh proposed that the word "consider" should be deleted if the words "in appropriate cases and to the extent possible" were to be retained. The Chairperson and several delegations also proposed the words "shall endeavour to implement" or "shall make their best efforts to implement".

"*(a)* Appropriate housing;

"*(b)* Counselling and information, in a language that the trafficked persons can understand, in particular as regards their legal rights;

"*(c)* Medical, psychological and economic assistance; and

"*(d)* Employment, educational and training opportunities.

"4. States Parties shall take into account, in applying the provisions of this article, the special requirements of children, including appropriate housing, education and care.

"5. States Parties shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within their territories.

"6. States Parties shall ensure that their legal frameworks provide for measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."

Notes by the Secretariat

5. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 4, as amended on the basis of two proposals, submitted by Mexico (A/AC.254/L.239) and Azerbaijan (see A/AC.254/5/Add.36). The first proposal focused on paragraph 3 of the article and the second on paragraph 4. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons,

including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

C. Interpretative note

The interpretative note on article 6 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 71) is as follows:

Paragraph 3

The type of assistance set forth in this paragraph is applicable to both the receiving State and the State of origin of the victims of trafficking in persons, but only as regards victims who are in their respective territory. Paragraph 3 is applicable to the receiving State until the victim of trafficking in persons has returned to his or her State of origin, and to the State of origin thereafter.

Notes by the Secretariat

6. A separate article (article 7, on victim rehabilitation) was also discussed in the context of the negotiation process. It was included in the first drafts of the protocol, but was not finally incorporated as a separate provision in the restructured version of the protocol that was proposed as a result of the informal consultations held during the fifth session of the Ad Hoc Committee. However, as indicated above (see note 4 by the Secretariat concerning article 37 of the convention in part one), the objective of the present publication is to present a complete picture of the negotiations on the content of the convention and its protocols, irrespective of which provisions were finally included in the approved texts. For this reason, it has been considered appropriate to provide the following presentation of the relevant drafts of article 7 and the discussions on its content that had taken place before the informal consultations held during the fifth session of the Ad Hoc Committee.

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 7
"Victim rehabilitation

"1. Each State Party shall ensure that its legislative framework contains measures that, in appropriate cases, provide victims of trafficking in [women and children] [persons] with access to adequate procedures for seeking:

"*(a)* Compensation for damages, including compensation coming from fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in [women and children] [persons]; and

"*(b)* Restitution from the offenders.

"2. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self respect and dignity, in a manner appropriate to their age, gender and special needs."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 7
"Victim rehabilitation

"1. Each State Party shall ensure that its legislative framework contains measures that, in appropriate cases, provide victims of trafficking in persons with access to adequate procedures for seeking:

"*(a)* Compensation for damages, including compensation coming from fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in persons; and

"*(b)* Restitution from the offenders.

"2. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs."

Rolling text (A/AC.254/4/Add.3/Rev.3)

"Article 7
"Victim rehabilitation[21]

"1. Each State Party shall ensure that its legislative framework[22] contains[23] measures that provide victims of trafficking in persons with access[24] to adequate procedures[25] for seeking:

"*(a)* Compensation for damages, including compensation coming from fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in persons;[26] and

"*(b)* Restitution from the offenders.[27]

"2. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs."[28, 29]

Notes by the Secretariat

7. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences, basing her comments on the text of the draft protocol contained in document A/AC.254/4/Add.3/Rev.2, proposed that the term "rehabilitation" should be replaced by the term "reintegration" and that the phrase "in appropriate cases" should be deleted in paragraph 1 (see also on this last point the concurring opinion of the United Nations High Commissioner for Human Rights, as reflected in document A/AC.254/16, para. 18). It was also suggested that paragraph 1 should be amended so that confiscation of traffickers' assets was mentioned and the amount of compensation was determined according to gravity of harm. As far as paragraph 2 was concerned, it was proposed that the wording should be made mandatory ("shall enforce measures"), and that the right of access to voluntary and confidential health testing services should be stipulated (see A/AC.254/CRP.13). At the same session of the Ad Hoc Committee, the International Labour Organization submitted a note (A/AC.254/CRP.14),

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[21]At the fourth session of the Ad Hoc Committee, some delegations suggested that the title of this article should be changed to "Compensation and restitution of victims" (see for example the proposal of Mexico, A/AC.254/5/Add.12) or "Victim reintegration" (see for example the proposal of India, A/AC.254/L.65).

[22]At the fourth session of the Ad Hoc Committee, some delegations suggested replacing the words "legislative framework" with the words "domestic law".

[23]At the fourth session of the Ad Hoc Committee, some delegations suggested inserting the words "or permits" after the word "contains".

[24]At the fourth session of the Ad Hoc Committee, one delegation suggested that such access should be available to victims who returned to their country of origin or habitual residence of choice.

[25]At the fourth session of the Ad Hoc Committee, one delegation suggested including a specific provision for children.

[26]At the fourth session of the Ad Hoc Committee, some delegations expressed concern about linking compensation to fines, penalties and confiscated proceeds, while others suggested incorporating into this article the idea of using proceeds from confiscation and seizure to benefit victims, a provision contained in article 5 bis. The Holy See suggested inserting after subparagraph 1 *(b)* of this article the second sentence of article 5 bis.

[27]At the fourth session of the Ad Hoc Committee, Austria suggested replacing subparagraphs *(a)* and *(b)* of this paragraph with the following: "*(a)* compensation for damages; and *(b)* restitution". It was further suggested that the terms should be defined in a footnote.

[28]At the fourth session of the Ad Hoc Committee, some delegations suggested incorporating paragraph 2 of this article in article 4.

[29]At the fourth session of the Ad Hoc Committee, China suggested adding a new article, 7 bis, entitled "Measures to eliminate trafficking in women and children [persons]" (see A/AC.254/L.52).

in which it was argued that article 7 should ensure that trafficked persons who had been irregularly employed were not deprived of their rights arising from the work actually performed. It was also emphasized that adequate measures were necessary to ensure recourse to the judiciary for the trafficked persons, without the fear of potential expulsion. The United Nations High Commissioner for Human Rights was of the view that paragraph 1 of article 7 could be strengthened through insertion of a general provision obliging States parties to provide information to trafficking victims on the possibilities of obtaining remedies, including compensation for trafficking and other criminal acts, and to render reasonable assistance to such victims to obtain the remedies to which they were entitled under national law. It was also suggested that the wording of paragraph 2 should be made more precise by inserting a provision to the effect that States parties were to take steps (both individually and through international assistance and cooperation) to provide for the physical, psychological and social recovery of victims of trafficking. Lastly, the High Commissioner for Human Rights proposed that the term "rehabilitation" might be replaced with terms used in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), such as "restitution", "compensation" and "assistance" (see A/AC.254/16, paras. 22 24).

8. As indicated above, in the restructured version of the draft protocol that was submitted by Belgium, Poland and the United States at the informal consultations held during the fifth session of the Ad Hoc Committee (A/AC.254/5/Add.13), paragraph 1 of article 7 was inserted in article 4 as paragraph 4. Paragraph 2 of article 7 was deleted, as it was substantially similar to subparagraph 2 *(d)* of article 4.

Article 7. Status of victims of trafficking in persons in receiving States

A. Negotiation texts

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 5
"Status of the victim in the receiving State

"1. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall consider providing immigration laws that permit victims of trafficking to remain in its territory, temporarily or permanently, in appropriate cases.

"2. Each State Party shall give appropriate consideration to humanitarian and compassionate factors in the determination of a victim's status in its territory when it is the receiving State."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 5
"Status of the victim in the receiving State

"1. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall consider enacting immigration laws that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

"2. Each State Party shall give appropriate consideration to humanitarian and compassionate factors in determining the status of such a victim in its territory when it is the receiving State Party."

Rolling text (A/AC.254/4/Add.3/Rev.3)

"Article 5
"[Status][Situation][1] of the victim in the receiving State

"1. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall [consider][2] enacting immigration laws[3] that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.[4]

"2. Each State Party shall give appropriate consideration to humanitarian and compassionate factors in determining the status of such a victim in its territory when it is the receiving State Party."[5]

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences submitted a position paper (A/AC.254/CRP.13), in which it was emphasized that the threat of deportation deterred many trafficked persons from reporting to the authorities and that the provision of temporary residency status and work authorization, as well as the possibility of permanent residency status, would facilitate the successful prosecution and punishment of traffickers. In view of those arguments, the following wording was proposed as subparagraph 1 *(a):*

"*(a)* States Parties must prevent immediate expulsion of a trafficked person by staying any deportation orders, and provide residency status and employment authorization for a period of six months initially, during which time the trafficked person may decide whether or not to initiate or become a witness in any legal proceedings brought against the trafficker. If the trafficked person decides to pursue civil action or serve as a witness in criminal proceedings, the trafficked person shall be provided with residency status and employment authorization for the duration of the legal proceedings, including all appeals."

It was also proposed that the protocol should be consistent with article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General

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[1]At the fourth session of the Ad Hoc Committee, a decision was made to insert the word "situation" next to the word "status" and to put each of those words in square brackets.

[2]At the fourth session of the Ad Hoc Committee, several delegations suggested more obligatory language, such as "shall consider" or "shall enact".

[3]At the fourth session of the Ad Hoc Committee, some delegations suggested replacing the words "immigration laws" with the words "legislation or other measures".

[4]At the fourth session of the Ad Hoc Committee, some delegations proposed to delete the words "in appropriate cases", while others suggested inserting those words before the word "permanently".

[5]At the fourth session of the Ad Hoc Committee, France and the United Kingdom of Great Britain and Northern Ireland suggested merging the two paragraphs of this article as follows:

"In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall enact and adopt measures that permit victims of trafficking in persons after due consideration to humanitarian and compassionate factors to remain in its territory, temporarily or, in appropriate cases, permanently."

At the same session, Morocco suggested new wording for paragraph 1 (see A/AC.254/5/Add.12), as follows:

"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."

In addition, Colombia suggested new wording for paragraph 2 (see A/AC.254/5/Add.12 and Corr.1), as follows:

"2. Each State Party shall give appropriate consideration to humanitarian and support factors in determining the status as a migrant of such a victim in its territory when it is the receiving State."

Assembly resolution 39/49, annex), which prohibited expelling, returning or extraditing a person to another State where there were substantial grounds for believing that that person would be in danger of being subjected to torture. Relevant wording was therefore suggested. It was finally argued that the protocol should reaffirm and grant the trafficked persons the rights and privileges to which stateless persons were entitled under international human rights law.

2. At the fourth session of the Ad Hoc Committee, the United Nations High Commissioner for Human Rights submitted an informal note in which it was argued that the identification of an individual as a trafficked person should be sufficient to ensure that immediate expulsion that went against the will of the victim did not occur and that the expanded protection and assistance provisions of the protocol became immediately applicable. The High Commissioner urged Member States to consider a provision whereby trafficked persons were provided with the option of at least temporary residence. In addition to providing a measure of safety, such a provision would encourage victims of trafficking to cooperate with the authorities and thereby contribute to achieving the law enforcement objectives of the protocol (see A/AC.254/16, para. 21).

3. The version of article 5 contained in document A/AC.254/4/Add.3/Rev.3 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.4).

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 5
"[Status] [Situation] of the victim in the receiving State

"1. In addition to measures provided pursuant to article 4 of this Protocol, States Parties shall [consider] enacting immigration laws that permit victims of trafficking in persons to remain in their territories, temporarily or permanently, in appropriate cases.

"2. States Parties shall give appropriate consideration to humanitarian and compassionate factors in determining the status of victims in their territories when they are the receiving State Party."

Rolling text (A/AC.254/4/Add.3/Rev.6)

"Article 5
"Status[6] *of the victim in the receiving State*

"1. In addition to measures provided pursuant to article 4 of this Protocol, States Parties shall [consider][7] adopting legislative or other appropriate measures that

[6]At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations expressed a preference for using the word "status" rather than the word "situation" in the title of this article.

[7]As indicated above, at the fourth session of the Ad Hoc Committee, several delegations suggested more obligatory language such as "shall consider" or "shall enact". At the informal consultations held during the seventh session of the Ad Hoc Committee, there was no agreement on whether this paragraph should be obligatory or not.

permit victims of trafficking in persons[8] to remain in their territories, temporarily or permanently, in appropriate cases.[9]

"2. In implementing the provision contained in paragraph 1 of this article,[10] States Parties shall give appropriate consideration to humanitarian and compassionate factors."[11, 12]

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 5
"Status of the victim in the receiving State

"1. In addition to measures provided pursuant to article 4 of this Protocol, States Parties shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territories, temporarily or permanently, in appropriate cases.[13]

"2. In implementing the provision contained in paragraph 1 of this article, States Parties shall give appropriate consideration to humanitarian and compassionate factors."[14]

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 5, as amended. The last amendments are reflected in the final text of the protocol,

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[8]At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations suggested inserting the words "to apply" after the word "person" in order to show that the right to remain in their territory was not automatically conferred on trafficked persons. A majority of delegations opposed that proposal, stating that a procedure indicating a necessary step for such persons to apply to remain in the territory was encompassed by the words "other appropriate measures" in the second line of the paragraph. The delegations acknowledged that it was not the intention of the paragraph to confer the right to remain, but that the decision whether or not to grant temporary or permanent residence was always at the discretion of the State party.

[9]As indicated above, at the fourth session of the Ad Hoc Committee, some delegations proposed to delete the words "in appropriate cases", while others suggested inserting those words before the word "permanently". At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested placing those words after the word "persons".

[10]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement that this phrase should be added at the beginning of this paragraph in order to establish a link with paragraph 1.

[11]At the informal consultations held during the seventh session of the Ad Hoc Committee, Canada, supported by many delegations, expressed the view that the words "compassionate factors" meant personal circumstances such as family situation, age, common-law relationship and other factors that should be considered on an individual and case-by-case basis. "Humanitarian factors", on the other hand, were the rights established in the human rights instruments and were applicable to all persons.

[12]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the words "in determining the status of victims in their territories when they are the receiving State Party", which had appeared at the end of this paragraph in the previous text (A/AC.254/4/Add.3/Rev.5).

[13]At its ninth session, the Ad Hoc Committee agreed on the text of this paragraph, retaining the word "consider" without square brackets, provided that some concerns were noted. Most delegations were concerned that the protocol might inadvertently become a means of illicit migration if States parties were obliged to adopt legislation permitting victims to remain in the countries to which they were trafficked. There was general agreement, however, that there was a legitimate need for victims to remain in some cases for humanitarian purposes and to protect them from being victimized again by traffickers and that countries should take this into consideration. Several delegations voiced particular concern about the immediate repatriation of victims of trafficking.

[14]As indicated above, at the informal consultations held during the seventh session of the Ad Hoc Committee, Canada, supported by many delegations, expressed the view that the words "compassionate factors" meant personal circumstances such as family situation, age, common-law marital relationship and other factors that should be considered on an individual and case-by-case basis. "Humanitarian factors", on the other hand, were the rights established in the human rights instruments and were applicable to all persons. At the ninth session of the Ad Hoc Committee, this paragraph was agreed to.

as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

5. The United Arab Emirates requested that the report of the Ad Hoc Committee on its eleventh session should reflect its position on article 7, paragraph 1, namely, that it considered itself not bound to provide the right of residence referred to at the end of that provision.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 7
Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8. Repatriation of victims of trafficking in persons

A. Negotiation texts

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 6[1]
"Return of victims of trafficking

"1. Each State Party agrees to facilitate and accept, without delay, the return of a victim of trafficking who is a national of that State Party or who, at the time of entry into the receiving State, had the right of abode in the territory of the first State Party.

"2. At the request of a State Party that is the receiving State, each State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking is a national of the requested State.

"3. In order to facilitate the return of victims of trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 6
"Return of victims of trafficking in persons

"1. Each State Party agrees to facilitate and accept, without delay, the return of a victim of trafficking in persons who is a national of that State Party or who had the right of abode in the territory of that State Party at the time of entry into the receiving State.

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[1]Australia and Canada suggested that several articles in this protocol should be based on articles contained in the proposals of the United States and Canada regarding the draft migrants protocol (A/AC.254/4/Add.1/Rev.1). One of the articles thus adapted was the present one.

"2. At the request of a State Party that is the receiving State, each State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of such trafficking is a national of the requested State.

"3. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory."

Rolling text (A/AC.254/4/Add.3/Rev.3)

"Article 6
"Return[2] of victims[3] of trafficking in persons

"1. Each State Party agrees to facilitate and accept, without delay,[4] the return of a victim of trafficking in persons[5] who is a national of that State Party or who had the right of abode[6] in the territory of that State Party at the time of entry into the receiving State.[7, 8]

"2. At the request of a State Party that is the receiving State, each State Party shall, without [undue or unreasonable][9] delay, verify whether a person who is a victim of such trafficking is a national of the requested State.

"3. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory."[10]

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[2]At the fourth session of the Ad Hoc Committee, some delegations suggested replacing the word "return" with the word "repatriation".

[3]At the fourth session of the Ad Hoc Committee, some delegations suggested that the word "victims" should be replaced with the words "trafficked persons".

[4]At the fourth session of the Ad Hoc Committee, some delegations suggested deleting the words "without delay".

[5]At the fourth session of the Ad Hoc Committee, some delegations raised concern about who should bear the cost associated with the repatriation of victims.

[6]At the fourth session of the Ad Hoc Committee, some delegations stated that there was a need to clarify the term "right of abode". For example, it was not clear whether it included right to transit or temporary residence. In that context, Mexico suggested replacing the word "had" with the word "has".

[7]At the fourth session of the Ad Hoc Committee, some delegations expressed the view that repatriation of victims should be based on consent. Consensus was not reached regarding repatriation of victims in the absence of such consent. In that context, bilateral and multilateral agreements should be encouraged. Some delegations also stated that special consideration should be given to repatriation of children.

[8]At the fourth session of the Ad Hoc Committee, Mexico proposed (see A/AC.254/5/Add.12 and Corr.1) new paragraphs 1 bis and 1 ter, based on article 19, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (United Nations, Treaty Series, vol. 96, No. 1342), which were as follows:

"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.

"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."

[9]At the fourth session of the Ad Hoc Committee, it was agreed that the words "undue or unreasonable" should be placed in brackets.

[10]At the fourth session of the Ad Hoc Committee, China suggested adding the following new paragraph after paragraph 3 of this article: "3 bis. The receiving State of victims of trafficking shall provide necessary facilities for the return of victims."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences submitted a position paper in which it was suggested that article 6 should provide for financial and other support to non-governmental organizations providing repatriation and reintegration services to trafficked persons (see A/AC.254/CRP.13).

2. At the fourth session of the Ad Hoc Committee, the United Nations High Commissioner for Human Rights submitted an informal note in which it was argued that safe and, as far as possible, voluntary return must be at the core of any credible protection strategy for trafficked persons (see A/AC.254/16, para. 20; see also in the same context the note submitted during the eighth session of the Ad Hoc Committee by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration (A/AC.254/27 and Corr.1, para. 8)).

3. At the informal consultations held during the fifth session of the Ad Hoc Committee, a restructured version of the draft protocol was submitted by Belgium, Poland and the United States (A/AC.254/5/Add.13). At the sixth session of the Ad Hoc Committee, it was agreed that the restructured version should be used as the basis for further discussion. In that version, former article 11, entitled "Verification of documents" was inserted as new paragraph 3 of the present article, where it seemed to fit better. In addition, as the majority of delegations had suggested, the title of the article was changed from "Return of victims of trafficking in persons" to "Repatriation of victims of trafficking in persons".

4. The version of article 6 contained in document A/AC.254/4/Add.3/Rev.3 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.4).

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 6
"Repatriation of victims of trafficking in persons

"1. Each State Party agrees to facilitate and accept, without delay,[11] the return of a victim of trafficking in persons who is a national of that State Party or who had the right of abode[12] in the territory of that State Party at the time of entry into the receiving State.[13]

"2. At the request of a State Party that is the receiving State, each State Party shall, without [undue or unreasonable] delay, verify whether a person who is a victim of such trafficking is a national of the requested State.

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[11]At the informal consultations held during the seventh session of the Ad Hoc Committee, some delegations suggested adding the words "once all the legal proceedings are concluded" after the word "delay". One delegation suggested replacing the words "without delay" with the words "within a reasonable time".

[12]As indicated above, at the fourth session of the Ad Hoc Committee, some delegations stated that there was a need to clarify the term "right of abode". For example, it was not clear whether it included right to transit or temporary residence. In that context, Mexico suggested replacing the word "had" with the word "has". At the informal consultations held during the seventh session of the Ad Hoc Committee, a similar discussion took place. Many delegations expressed the view that the right of abode should be based on the victim's past right, which was easier to establish than the right any such victim might have on the date of return.

[13]At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested adding the following sentence at the end of this paragraph: "States Parties agree to facilitate the passage of such persons through their territories."

"3. States Parties shall, at the request of another State Party and subject to the domestic laws of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used for trafficking in persons.[14]

"4. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory."[15, 16]

Ninth session: 5-16 June 2000

Notes by the Secretariat

5. Delegations based their comments on the text of article 6 of the revised draft protocol contained in document A/AC.254/4/Add.3/Rev.6, which was the same as that contained in document A/AC.254/4/Add.3/Rev.5.

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 6
"Repatriation of victims of trafficking in persons

"1. The State of which a victim of trafficking in persons is a national or in which the person had[17] the right of permanent residence[18] at the time of entry into the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

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[14]At its sixth session, the Ad Hoc Committee decided to use the text of article 13 of the draft migrants protocol as amended during that session (see A/AC.254/L.128/Add.2) as the basis for further discussion. Originally, this paragraph appeared, as already indicated, as article 11 of the previous text (A/AC.254/4/Add.3/Rev.4) and was inserted as article 6, paragraph 3, in the present restructured text. Several delegations expressed the view that the paragraph should be moved to article 9, on international travel documents. At the informal consultations held during the seventh session of the Ad Hoc Committee, more delegations were in favour of retaining the paragraph in this article.

[15]At the informal consultations held during the seventh session of the Ad Hoc Committee, one delegation suggested that receiving States should verify the nationality claimed by victims before proceeding with the repatriation of such victims.

[16]As indicated above, at the fourth session of the Ad Hoc Committee, China suggested adding the following new paragraph after paragraph 4 of this article: "5. The receiving State of victims of trafficking shall provide necessary facilities for the return of victims." At the informal consultations held during the seventh session of the Ad Hoc Committee, several delegations opposed the proposal, stating that the allocation of costs was best left to the States parties involved. One delegation suggested adding, as an alternative, the following sentence: "States Parties shall conclude agreements determining the means of implementing this article."

[17]Following discussion at the ninth session of the Ad Hoc Committee, it was agreed to use the past tense ("had") in paragraphs 1 and 2 of this article. Several delegations pointed out that if repatriation depended on rights of residence or abode at the time of repatriation, it would be open to receiving States to block repatriation by revoking the residency status or citizenship of trafficking victims.

[18]As indicated above, the meaning of the words "right of abode" was discussed at several sessions of the Ad Hoc Committee. In response to concerns, one delegation clarified that this included rights of ongoing or permanent residence, but did not include fixed-term or temporary status, such as that often granted to students, temporary workers or visitors. It was agreed that language equivalent to "permanent residence" or "permanent abode" was needed for equal clarity in all languages. It was also decided to make the same change wherever references to rights of residence or abode appeared in the text. Germany expressed concern that this was overly restrictive and noted that it did, in some cases, repatriate people to countries in which they might have had or had had only temporary residence. In that regard, it reserved the right to seek the cooperation of other States for such repatriations and to interpret the wording of this provision as not restricting its right to do so.

"2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or had, at the time of entry into the receiving State, the right of permanent residence, such return shall be with due regard for the safety of that person, as well as the status of any legal proceedings related to the fact that the person is a victim of trafficking [and, as far as possible, voluntary].[19]

"3. The provisions of this article shall be without prejudice to any right afforded to the victim by any domestic law of the receiving State.[20]

"4. At the request of a State Party that is the receiving State, each State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of such trafficking is a national of the requested State Party or had the right of permanent residence in the requested State Party at the time of entry into the receiving State Party.[21]

[Former paragraph 3 was moved to article 9 bis]

"5. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of permanent residence at the time of entry into the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory."

Notes by the Secretariat

6. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 6, as amended with the inclusion of an additional paragraph based on a proposal submitted by France (A/AC.254/L.252) and rearrangement of the paragraphs. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 8
Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

[19]At the ninth session of the Ad Hoc Committee, a majority of delegations expressed the view that the words "as far as possible, voluntary" should be deleted, but several wanted to retain them.

[20]At the ninth session of the Ad Hoc Committee, paragraphs 1, 2 and 3 were agreed to based on the Chairperson's proposal (see A/AC.254/L.206), as amended.

[21]At the ninth session of the Ad Hoc Committee, there was general agreement to retain the words "undue or unreasonable" without square brackets. The words "or had the right of permanent residence in the requested State Party at the time of entry" were added and the text was agreed to.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

C. Interpretative notes

The interpretative notes on article 8 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 72-77) are as follows:

Paragraph 1

(a) The words "permanent residence" in this paragraph mean long-term residence, but not necessarily indefinite residence. The paragraph should be understood as being without prejudice to any domestic legislation regarding either the granting of the right of residence or the duration of residence.

Paragraph 2

(b) The words "and shall preferably be voluntary" are understood not to place any obligation on the State party returning the victims.

Paragraph 3

(c) The understanding of the Ad Hoc Committee was that a return under this article shall not be undertaken before the nationality or right of permanent residence of the person whose return is sought has been duly verified.

Paragraph 4

(d) The words "travel documents" include any type of document required for entering or leaving a State under its domestic law.

Paragraph 6

(e) The references to agreements or arrangements in this paragraph include both agreements that deal specifically with the subject matter of the protocol and more general readmission agreements that include provisions dealing with illegal migration.

(f) This paragraph should be understood as being without prejudice to any other obligations under customary international law regarding the return of migrants.

Prevention, cooperation and other measures

Article 9. Prevention of trafficking in persons

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 6
"Prevention of trafficking in persons

"1. In addition to measures provided pursuant to article 5, each State Party shall take measures to ensure that it provides or strengthens information programmes to promote awareness among the public at large, including potential victims and their families, of the causes and consequences of trafficking in persons, including the criminal penalties and risks to the life and health of the victim.

"2. Each State Party shall consider establishing social policies and programmes to prevent:

"*(a)* Trafficking in persons; and

"*(b)* The revictimization of trafficked persons."

Argentina (A/AC.254/8)

"Article 7
"Information and education

"States Parties shall:

"*(a)* Endeavour to undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in women and children, such programmes to include information on potential victims, causes and consequences of trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

"*(b)* Establish methods for systematic gathering of data and promotion of research to determine the modus operandi of international trafficking in women and children;

"*(c)* Encourage, within the private sector, the setting up of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in women and children;

"*(d)* Promote the establishment of programmes of victim assistance that provide, inter alia, for temporary housing, psychological, medical and legal support and the safe return of the victims to their country of origin in cases where not arranged by that country;

"*(e)* Distribute information relating to the different forms of international trafficking in women and children and undertake programmed actions to combat such trafficking."

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 12
"Prevention of trafficking

"1. Each State Party shall consider establishing social policies and programmes to prevent:

"*(a)* Trafficking in [women and children] [persons]; and

"*(b)* The revictimization of trafficked [women and children] [persons, in particular women and children].

"2. States Parties [shall] [shall endeavour to] :

"*(a)* [Endeavour to][1] Undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in [women and children] [persons]. Such programmes should include information on potential victims, causes and consequences of trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

"*(b)* Establish methods for gathering data and promote research to determine the modus operandi of international trafficking in [women and children] [persons];

"*(c)* Encourage, within the private sector, the establishment of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in [women and children] [persons]; and

"*(d)* Disseminate information relating to the different forms of international trafficking in [women and children] [persons] and undertake programmed actions to combat such trafficking.

"3. States Parties [shall][1] [are encouraged to][2] provide the Secretary-General of the United Nations with a list of non-governmental organizations devoted to

[1]The language in square brackets was proposed in document A/AC.254/8.

[2]The language in square brackets was proposed in document A/AC.254/4/Add.3.

preventing the unlawful acts covered in this Protocol with a view to compiling a database that will enable the non-governmental organizations and States Parties to exchange information."

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 12
"Prevention of trafficking in persons

"1. Each State Party shall consider establishing social policies and programmes to prevent:

"*(a)* Trafficking in persons; and

"*(b)* The revictimization of trafficked persons, especially women and children.

"2. States Parties [shall endeavour to]:

"*(a)* Undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in persons. Such programmes should include information on potential victims, causes and consequences of such trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

"*(b)* Establish methods for gathering data and promote research to determine the modus operandi of international trafficking in persons;

"*(c)* Encourage, within the private sector, the establishment of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in persons; and

"*(d)* Disseminate information relating to the different forms of international trafficking in persons and undertake programmed actions to combat such trafficking.

"3. States Parties [shall] [are encouraged to] provide the Secretary-General of the United Nations with a list of non-governmental organizations devoted to preventing the unlawful acts covered in this Protocol with a view to compiling a database that will enable the non-governmental organizations and States Parties to exchange information."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences submitted a position paper, in which it was argued that the protocol should use stronger language and require States parties to undertake information campaigns and programmes to promote awareness and prevention of trafficking (see A/AC.254/CRP.13). At the same session of the Ad Hoc Committee, the United Nations High Commissioner for Human Rights proposed that draft article 12 should include a provision to the effect that actions aimed at preventing trafficking should not have discriminatory effects or infringe upon the right of an individual to leave her or his country or legally to migrate to another (see A/AC.254/16, para. 25). For the relevant proposals submitted by the International Labour Organization during the fourth session of the Ad Hoc Committee (see A/AC.254/CRP.14), see note 1 by the Secretariat concerning article 10 of the present protocol.

2. At the informal consultations held during the fifth session of the Ad Hoc Committee, it was suggested that the proposal of China (A/AC.254/L.52) for an article 7 bis, entitled "Measures to eliminate trafficking in women and children [persons]" could be considered in the context of the present article, which was incorporated as article 10 in the restructured version of the draft protocol proposed by Belgium, Poland and the United States (A/AC.254/5/Add.13).

3. The version of this article contained in document A/AC.254/4/Add.3/Rev.2 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.3 and 4).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 10[3]
"Prevention of trafficking in persons

"1. States Parties shall [endeavour to][4] establish comprehensive policies, programmes and other measures:

"*(a)* To prevent and combat trafficking in persons; and

"*(b)* To protect trafficked persons, especially women and children, from revictimization.

"2. States Parties shall endeavour to undertake [, as appropriate,][5] measures such as research, information and mass media campaigns and social and economic initiatives to prevent [and combat][6] trafficking in persons.[7]

"3. Policies, programmes and other measures taken in accordance with this article should include cooperation with non-governmental organizations, other relevant organizations[8] or other elements of civil society."

Notes by the Secretariat

4. At the eighth session of the Ad Hoc Committee, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International

[3]At the sixth session of the Ad Hoc Committee, consensus was reached on adopting the text drafted by an informal working group convened at the request of the Chairperson (A/AC.254/L.113) as the basis for further discussion of this article. Discussions on this text continued until the adjournment of the session and proposals up to that point are reflected in the footnotes that follow.

[4]At the sixth session of the Ad Hoc Committee, several delegations suggested deleting the square brackets. One delegation suggested adding the words "to the extent possible" or "within available means".

[5]At the sixth session of the Ad Hoc Committee, one delegation suggested deleting the words "as appropriate".

[6]At the sixth session of the Ad Hoc Committee, several delegations suggested that the words "and combat" should be added in order to be consistent with subparagraph *(a)* of paragraph 1.

[7]At the sixth session of the Ad Hoc Committee, Switzerland suggested that this paragraph should also refer to protecting trafficked persons from revictimization in order to be consistent with subparagraphs *(a)* and *(b)* of paragraph 1. Switzerland also suggested expanding the title accordingly.

[8]At the sixth session of the Ad Hoc Committee, several delegations expressed the view that the words "other relevant organizations" should be clarified.

Organization for Migration proposed that reference could usefully be made to steps that could be taken by States parties to address the root causes of trafficking, including economic factors, social and cultural factors, political and legal factors and international factors (see A/AC.254/27 and Corr.1, para. 12).

5. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 10, as amended with the inclusion of two additional paragraphs based on a proposal submitted by the United States of America (see A/AC.254/5/Add.33) and on a similar proposal submitted by China (see A/AC.254/5/Add.28). In addition, the article was relocated at the beginning of chapter III (Prevention, cooperation and other measures). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

III. Prevention, cooperation and other measures

Article 9
Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10. Information exchange and training

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 5
"Law enforcement measures

"1. Law enforcement authorities of States Parties shall cooperate with one another in order to exchange information to enable them to determine:

"*(a)* Whether individuals crossing or attempting to cross an international border with documents belonging to others are perpetrators or victims of trafficking in persons;

"*(b)* Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in persons;

"*(c)* The methods used by organized groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

"*(d)* Methods and means used for trafficking in persons, including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

"2. Each State Party shall provide or strengthen training to combat trafficking in persons for law enforcement, immigration and other relevant officials. The training should include components focusing on preventing trafficking in persons, prosecuting perpetrators of such trafficking, encouraging cooperation with appropriate non-governmental organizations and protecting the rights of the victims."

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 8[1]
"Law enforcement measures

"1. In addition to adopting the measures provided for in this article and pursuant to article 16 of this Protocol, law enforcement authorities of States Parties shall,

[1]Law enforcement and cooperation provisions (e.g. technical assistance, asset seizure and information exchanges) should be included only insofar as they went beyond those contained in the convention. Article 16 would incorporate provisions from the convention that are applicable to the subject matter of this protocol. The protocol would therefore have to be reviewed and any redundancies removed when the text of the convention had been developed more fully.

as appropriate, cooperate with one another by exchanging information to enable them to determine:

"*(a)* Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in [women and children] [persons];

"*(b)* Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in [women and children] [persons];

"*(c)* The methods used by groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

"*(d)* Methods and means used for trafficking in [women and children] [persons], including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

"2. Each State Party shall provide or strengthen training to prevent trafficking in [women and children] [persons] for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims and should encourage cooperation with appropriate non-governmental organizations."

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 8
"Law enforcement measures

"1. In addition to adopting the measures provided for in this article and pursuant to article 16 of this Protocol, law enforcement authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information to enable them to determine:

"*(a)* Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

"*(b)* Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in persons;

"*(c)* The methods used by groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

"*(d)* Methods and means used for trafficking in persons, including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

"2. Each State Party shall provide or strengthen training to prevent trafficking in persons for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims and should encourage cooperation with appropriate non-governmental organizations."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences submitted a position paper in which it was argued that the present article should provide for mandatory cross-cultural, gender and victim-sensitivity training for police, criminal justice officers and professionals involved in the criminal justice system. The Special Rapporteur also proposed that a new paragraph 3 should be inserted in the text of the article aiming at prohibiting all measures targeted at preventing and obstructing the voluntary movement of citizens on the ground that they might be or have been victims of trafficking (see A/AC.254/CRP.13). The International Labour Organization proposed that effective law enforcement should include training of labour inspectors and the judiciary, as well as relevant actors in civil society, such as legal aid and support organizations and workers' and employers' organizations. It also suggested that national or regional programmes of action, including law enforcement measures, should be designed and implemented in consultation with all the relevant government institutions, non-governmental organizations and other stakeholders, such as workers' and employers' organizations, as well as private employment/recruitment agencies (see A/AC.254/CRP.14). At the fourth session of the Ad Hoc Committee, the Special Rapporteur on the sale of children, child prostitution and child pornography proposed that the phrase "except children, who shall always be considered as victims" should be inserted in subparagraph 1 *(a)* (see A/AC.254/CRP.19).

2. At the informal consultations held during the fifth session of the Ad Hoc Committee, a restructured version of the draft protocol was submitted by Belgium, Poland and the United States (A/AC.254/5/Add.13), in which the present article was incorporated as article 7.

3. The version of this article contained in document A/AC.254/4/Add.3/Rev.2 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.3 and 4).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"III. Prevention, cooperation and other measures

"Article 7
"Law enforcement measures

"1. In addition to adopting the measures provided for in this article and pursuant to article 14 of this Protocol, law enforcement authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information to enable them to determine:

"*(a)* Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

"*(b)* Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in persons;

"*(c)* The methods used by groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

"*(d)* Methods and means used for trafficking in persons, including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

"2. States Parties shall provide or strengthen training to prevent trafficking in persons for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers,[2] and should encourage cooperation with appropriate non-governmental organizations."[3]

Notes by the Secretariat

4. At the informal consultations held during the seventh session of the Ad Hoc Committee, discussion of this article was postponed pending the finalization of the corresponding provisions in the draft convention. Several delegations suggested that the title of this article did not match its content.

Ninth session: 5-16 June 2000

Notes by the Secretariat

5. Delegations based their comments on the text of article 7 of the revised draft protocol contained in document A/AC.254/4/Add.3/Rev.6, which was the same as that contained in document A/AC.254/4/Add.3/Rev.5.

Rolling text (A/AC.254/4/Add.3/Rev.7)

"III. Prevention, cooperation and other measures

"Article 7[4]
"Information and training measures for law enforcement[5]

"1. Law enforcement authorities[6] of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law,[7] to enable them to determine:

"*(a)* Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

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[2]The words "including protecting the victims from the traffickers" were added by the authors of the restructured text (Belgium, Poland and the United States). As the sixth session of the Ad Hoc Committee, it was agreed to use the restructured text as the basis for further discussion.

[3]At the sixth session of the Ad Hoc Committee, several delegations expressed the view that discussion of this paragraph should be deferred, as it was covered by article 21 of the draft convention.

[4]At the ninth session of the Ad Hoc Committee, the entire text of article 7 was agreed to.

[5]At the ninth session of the Ad Hoc Committee, the title was agreed to, subject to review of the words "law enforcement" in conjunction with the preparation of a glossary of terms.

[6]At the ninth session of the Ad Hoc Committee, several delegations expressed concern regarding the translation of the words "law enforcement authorities" into the other official languages of the United Nations and the inconsistency in the way the term was used throughout the text of the draft convention and the draft protocols. It was agreed that the matter should be resolved when the Ad Hoc Committee reviewed the glossary of terms.

[7]At the ninth session of the Ad Hoc Committee, there was general agreement to insert the words "in accordance with their domestic law".

"*(b)* The types of documentation that individuals have used or attempted[8] to use to cross an international border for the purpose of trafficking in persons;[9] and

"*(c)* The methods and means used by organized criminal groups for trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and the possible measures for detecting them.[10]

"2. States Parties shall provide or strengthen training to prevent trafficking in persons for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights, and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.[11]"

Notes by the Secretariat

6. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 7, as amended on the basis of two proposals submitted by Cuba, Mexico and the Netherlands (A/AC.254/L.244) and Canada (A/AC.254/5/Add.29). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 10
Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

[8]The translation of the word "attempt" into Arabic would be reviewed in conjunction with the preparation of a glossary of terms.

[9]At the ninth session of the Ad Hoc Committee, there was a lengthy discussion about whether to refer to exchanging information about the misuse of "valid" travel documents as well as altered or falsified ones. As a compromise, this text was agreed to.

[10]This text was agreed to at the ninth session of the Ad Hoc Committee, based on former subparagraphs *(c)* and *(d),* with amendments. One delegation further proposed a reference to language training.

[11]At the ninth session of the Ad Hoc Committee, paragraph 2 was agreed to, with several amendments. The reference to "human rights and child- and gender-sensitive issues" was added and the reference to non-governmental organizations and civil society was made consistent with the wording of article 10, paragraph 3.

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

C. Interpretative note

The interpretative note on article 10 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 78) is as follows:

Paragraph 1

The term "travel documents" includes any type of document required for entering or leaving a State under its domestic law.

Article 11. Border measures

A. Negotiation texts

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 9[1]
"Border controls

"1. Each State Party shall adopt such measures as may be necessary to detect and prevent trafficking in [women and children] [persons] between its territory and that of any other State Party by strengthening border controls, including by checking persons and travel or identity documents and, where appropriate, by inspecting and seizing vehicles and vessels.

"2. Each State Party shall adopt such training and other measures as may be necessary to ensure that victims of trafficking who are detected being trafficked by means of legal or illegal migration receive appropriate protection from the traffickers."

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 9
"Border controls

"1. Each State Party shall adopt such measures as may be necessary to detect and prevent trafficking in persons between its territory and that of any other State Party by strengthening border controls, including by checking persons and travel or identity documents and, where appropriate, by inspecting and seizing vehicles and vessels.

"2. Each State Party shall adopt such training and other measures as may be necessary to ensure that victims of such trafficking, who are detected being trafficked by means of legal or illegal migration receive appropriate protection from the traffickers."

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[1]Australia and Canada suggested that several articles in this protocol should be based on articles contained in the proposals of the United States and Canada regarding the draft migrants protocol (A/AC.254/4/Add.1/Rev.1). One of the articles thus adapted was the present one.

Notes by the Secretariat

1. At the informal consultations held during the fifth session of the Ad Hoc Committee, a restructured version of the draft protocol was submitted by Belgium, Poland and the United States (A/AC.254/5/Add.13), in which the present article was incorporated as article 8. Paragraph 2 of former article 9 was deleted, because it was covered by paragraph 2 of article 7 (see A/AC.254/4/Add.3/Rev.5). In addition, paragraphs 2 and 3 of article 14 of the previous draft of the protocol (A/AC.254/4/Add.3/Rev.2) on "other measures" were moved to article 8, where they seemed to fit better.

2. The version of this article contained in document A/AC.254/4/Add.3/Rev.2 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.3 and 4).

Sixth session: 6-17 December 1999

Rolling text (AC.254/4/Add.3/Rev.5)

"Article 8[2]
"Border controls [measures][3]

"Option 1

"1. States Parties shall adopt, without prejudice to their international commitments,[4] such measures[5] as may be necessary to detect and prevent trafficking in persons [between their territories and that of any other State],[6, 7] by strengthening border controls [, including by checking persons and travel or identity documents and, where appropriate, by inspecting and seizing vehicles and vessels].[8, 9]

"Option 2[10]

"1. Without prejudice to international agreements for the free movement of people, States Parties shall strengthen border controls as may be necessary to detect and prevent trafficking in persons between their territories and that of any other State, including by checking persons' travel or identity documents[11] and, where appropriate, by boarding and inspecting vehicles and vessels.[12]

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[2]This article is based on the text proposed by the informal working group convened at the request of the Chairperson during the sixth session of the Ad Hoc Committee (see A/AC.254/L.110).

[3]At the sixth session of the Ad Hoc Committee, general agreement was not reached on the title of this article.

[4]At the sixth session of the Ad Hoc Committee, consensus was reached on adding the words "without prejudice to their international commitments," after the words "shall adopt".

[5]At the sixth session of the Ad Hoc Committee, several delegations suggested that these measures should be adopted in a non-discriminatory manner.

[6]At the sixth session of the Ad Hoc Committee, some delegations suggested deleting the words "between their territories and that of any other State".

[7]At the sixth session of the Ad Hoc Committee, consensus was reached on deleting the word "Party" after the words "that of any other State" so that the measures contained in this paragraph would not be limited to the territories of States parties, but would also apply to non-States parties.

[8]The text of this paragraph is based on article 11, paragraph 1, of the draft migrants protocol.

[9]At the sixth session of the Ad Hoc Committee, several delegations expressed concern about the last part of this paragraph, in particular the reference to checking persons.

[10]At the sixth session of the Ad Hoc Committee, consensus was reached on adopting the proposal of the European Union as option 2.

[11]The words "checking persons' travel or identity documents" were suggested in order to address the concerns expressed by several delegations regarding the use of the words "checking persons".

[12]Belgium, supported by several delegations, suggested that paragraph 1 should state that it was without prejudice to article 5 on the status of the victim in the receiving States.

"2. States Parties shall[13] take [legislative or other] [appropriate] measures to prevent the means of transport operated by commercial carriers[14] from being used in the commission of offences covered by article 3 of this Protocol.[15]

"3. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, ascertain that all passengers travelling by [land] [land other than rail] [road],[16] air or sea have a valid[17] passport and visa,[18] if required, or any other documentation necessary for legal[19] entry into the receiving State.

"4. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for sanctions[20] in cases of violation of the obligation set out in paragraph 3 of this article.[21] [Such sanctions may include fines and forfeiture of the vehicles or means of transport used.][22]

"5. States Parties shall consider adopting measures that permit [, in conformity with their domestic law,] [and in appropriate cases,][23] the [revocation or denial of visas] [denial of entry][24] to persons [, including foreign officials,][25] [known on reasonable grounds to be implicated] [implicated][26] in crimes covered by this Protocol."[27]

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[13]At the sixth session of the Ad Hoc Committee, some delegations proposed that this provision should not be obligatory.

[14]At the sixth session of the Ad Hoc Committee, some delegations expressed concern about placing obligations on common carriers. Several delegations suggested that tourist organizations and other related travel agencies should be included in this paragraph.

[15]Paragraphs 2 to 4 were proposed by France and the United States (see A/AC.254/L.107) at the sixth session of the Ad Hoc Committee on the basis of the text of article 8, paragraph 1, contained in document A/AC.254/5/Add.13.

[16]At the sixth session of the Ad Hoc Committee, it became apparent that there were substantive differences between the various language texts regarding the words "travelling by land". There was general agreement that these variations should be placed in square brackets in all languages.

[17]At the sixth session of the Ad Hoc Committee, many delegations expressed concern that common carriers had no resources or expertise to ascertain the authenticity of the documents (i.e. whether they had been forged or falsified). There was general agreement that using the word "valid" would require common carriers to check only for obvious defects on the surface of the documents, such as documents that were blank or had expired.

[18]At the sixth session of the Ad Hoc Committee, several delegations suggested changing the words "passport and visa" to the words "travel documents".

[19]At the sixth session of the Ad Hoc Committee, some delegations suggested deleting the word "legal".

[20]At the sixth session of the Ad Hoc Committee, consensus was reached on replacing the word "penalties" with the word "sanction".

[21]At the sixth session of the Ad Hoc Committee, Argentina suggested incorporating a provision on cooperation mechanisms (A/AC.254/L.99).

[22]At the sixth session of the Ad Hoc Committee, several delegations suggested deleting this sentence. Some delegations suggested that reference to imprisonment should be made in this paragraph if the second sentence of this paragraph was retained.

[23]At the sixth session of the Ad Hoc Committee, several delegations suggested replacing the words "in appropriate cases" with the words "in conformity with their domestic law", while other delegations suggested retaining the words "in appropriate cases".

[24]At the sixth session of the Ad Hoc Committee, delegations expressed the view that this paragraph should be revised in order to take into account the many travellers who did not require visas to enter into a territory. The United States proposed replacing the words "revocation or denial of visas" with the words "denial of entry".

[25]At the sixth session of the Ad Hoc Committee, several delegations suggested that the words "including foreign officials" needed to be clarified. Some delegations suggested deleting the words.

[26]At the sixth session of the Ad Hoc Committee, many delegations expressed concern about the standards set by the words "known to be". Some delegations suggested including the words "on reasonable grounds", while other delegations supported deleting the words "known to be". In addition, one delegation proposed inserting the words "who have committed".

[27]This paragraph appeared as article 14, paragraph 3, in the previous text (A/AC.254/4/Add.3/Rev.4).

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.3/Rev.6)

"Article 8
"Border measures[28]

"1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking [persons][29] travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels, [with due respect for human rights].[30, 31]

"2. States Parties shall take legislative or other appropriate measures to prevent the means of transport operated by commercial carriers from being used in the commission of offences covered by article 3 of this Protocol.

"3. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, ascertain that all passengers travelling by land,[32] air or sea have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"4. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for sanctions in cases of violation of the obligation set out in paragraph 3 of this article.[33]

"5. States Parties shall consider adopting measures that permit, in conformity with their domestic law,[34] the denial of entry or revocation of visas[35] of persons[36] implicated[37] in crimes covered by this Protocol."

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[28]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using "Border measures" as the title of this article.

[29]At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations suggested deleting the word "persons" in order to alleviate some of the concern expressed regarding possible human rights violations during the checking process.

[30]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on adopting the text proposed by Mexico, amending option 2 of the previous text, which had been proposed by the European Union (see A/AC.254/4/Add.3/Rev.5).

[31]At the informal consultations held during the seventh session of the Ad Hoc Committee, several delegations expressed the view that human rights issues were covered under article 13. Belgium, supported by several delegations, suggested that paragraph 1 should state that it was without prejudice to article 5 on the status of the victim in the receiving States.

[32]At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations preferred to use the word "land" to include all forms of land transportation, including rail. A few delegations expressed concern about the feasibility of requiring rail operators to check documents, because many routes included both domestic and international stops.

[33]At the informal consultations held during the seventh session of the Ad Hoc Committee, a majority of delegations suggested deleting reference to specific sanctions in the previous text (see A/AC.254/4/Add.3/Rev.5). Some delegations opposed such a deletion. Some delegations suggested that a reference to imprisonment should be made in this paragraph.

[34]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the words "in conformity with their domestic law" rather than the words "in appropriate cases".

[35]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on substituting the words "denial of entry or revocation of visas" for the previous text (see A/AC.254/4/Add.3/Rev.5).

[36]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the reference to foreign officials.

[37]At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on using the word "implicated". Two delegations were in favour of using the words "confirmed to be implicated", but a majority of the delegations opposed that proposal.

Notes by the Secretariat

3. At the eighth session of the Ad Hoc Committee, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration submitted a note in which it was argued that emphasis should be placed on measures to assist border authorities in identifying and protecting victims, as well as intercepting traffickers. Particular reference was also made to the need to ensure that those measures did not impinge upon the human rights of individuals as set out in the major international instruments, including the International Covenant on Civil and Political Rights,[38] the Convention relating to the Status of Refugees of 1951[39] and the Convention on the Rights of the Child[40] (see A/AC.254/27 and Corr.1, paras. 10 and 11).

Ninth session: 5-16 June 2000

European Community (on behalf of Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden) (A/AC.254/L.197 and A/AC.254/5/Add.28)

It was proposed that article 8 should be revised to read as follows to ensure greater consistency with the text of articles 9 and 11 of the revised draft migrants protocol:

"Article 8
"Border measures

"1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels.

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying cooperation with border control agencies of other States, in particular by establishing and maintaining direct channels of communication.

"3. States Parties shall take legislative or other appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 3 of this Protocol.

"4. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, ascertain that all passengers travelling by land, sea or air are in possession of the travel documents required for legal entry into the receiving State.

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[38]United Nations, *Treaty Series,* vol. 999, No. 14668.

[39]Ibid., vol. 189, No. 2545.

[40]Ibid., vol. 1577, No. 27531.

"5. [*Identical with article 8, paragraph 4, as contained in document A/AC.254/4/Add.3/Rev.6*]

"6. [*Identical with article 8, paragraph 5, as contained in document A/AC.254/4/Add.3/Rev.6*]"

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 8, as amended. Paragraph 1 was considered to be an introductory and general paragraph and, therefore, it was proposed and decided that its second part (", including by checking … and inspecting vehicles and vessels") should be deleted. The reference in square brackets to due respect for human rights was also deleted, as it was considered to be covered by article 13 of the draft protocol (Saving clause). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 11
Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

C. Interpretative notes

The interpretative notes on article 11 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 79 and 80) are as follows:

Paragraph 2

(a) Victims of trafficking in persons may enter a State legally only to face subsequent exploitation, whereas in cases of smuggling of migrants, illegal means of entry are more generally used. This may make it more difficult for common carriers to apply preventive measures in trafficking cases than in smuggling cases and legislative or other measures taken in accordance with this paragraph should take this into account.

Paragraph 4

(b) Measures and sanctions applied in accordance with this paragraph should take into account other international obligations of the State party concerned. It should also be noted that this article requires States parties to impose an obligation on common carriers only to ascertain whether or not passengers have the necessary documents in their possession and not to make any judgement or assessment of the validity or authenticity of the documents. It should further be noted that this paragraph does not unduly limit the discretion of States parties not to hold carriers liable for transporting undocumented refugees.

Article 12. Security and control of documents

A. Negotiation texts

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 10[1]
"Security of travel documents

"1. States Parties shall adopt such measures as may be necessary to ensure that travel or identity documents issued by them are of such quality that they cannot readily be unlawfully altered, replicated, issued or otherwise misused.

"2. Each State Party shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and acceptance of travel or identity documents issued by or on behalf of the State Party."

Notes by the Secretariat

1. The title of this article, "Security of travel documents", was changed to "International travel documents" by consensus at the fourth session of the Ad Hoc Committee, so as not to cause confusion for States that may have internal travel or identity documents that are not intended to be regulated by this protocol.

2. The version of this article contained in document A/AC.254/4/Add.3/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.2-4).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 9
"International travel documents

"1. States Parties shall adopt such measures as may be necessary, in accordance with available means to ensure that travel or identity documents issued by them

[1]Australia and Canada suggested that several articles in this protocol should be based on articles contained in the proposals of the United States and Canada regarding the draft migrants protocol (A/AC.254/4/Add.1/Rev.1). One of the articles thus adapted was the present one.

are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated [,falsified] or issued.

"2. States Parties shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and recognition of travel or identity documents issued by or on behalf of the States Parties."

Notes by the Secretariat

3. At its sixth session, the Ad Hoc Committee discussed article 9 of the draft trafficking in persons protocol and decided to reorganize and amend the text of this provision taking into account the parallel discussions on article 12 of the draft migrants protocol. For that purpose, it was agreed that changes to the latter provision (see A/AC.254/L.128/Add.2) should be incorporated into article 9 for purposes of further discussion. Consequently, the amended paragraph 2 of article 9 of the draft trafficking in persons protocol, in particular, reflected the revisions to the text of article 12, paragraph 2 of the draft migrants protocol that had been incorporated into the text of that protocol pursuant to the instruction of the Chairperson, as a result of the work of an informal working group that met at the sixth session of the Ad Hoc Committee (see also footnote 4 concerning article 12 of the migrants protocol in part three). In view of the above, the reorganized text of article 9 of the draft trafficking in persons protocol read as follows:

"States Parties shall adopt such measures as may be necessary, in accordance with available means:

"*(a)* To ensure that travel or identity documents issued by them are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated, falsified or issued; and

"*(b)* To ensure the integrity and security of travel or identity documents issued by or on behalf of the States Parties and to prevent their unlawful creation, issuance and use."

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 9, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

C. Interpretative notes

The interpretative notes on article 12 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 81 and 82) are as follows:

(a) The term "travel documents" includes any type of document required for entering or leaving a State under its domestic law. The term "identity documents" includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.

(b) The words "falsified or unlawfully altered, replicated or issued" should be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. The intention was to include both documents that had been forged and genuine documents that had been validly issued but were being used by a person other than the lawful holder.

Article 13. Legitimacy and validity of documents

A. Negotiation texts

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 11[1]
"Verification of documents

"Each State Party shall, at the request of another State Party and subject to the domestic laws of the requested State, verify without undue or unreasonable delay the legitimacy and validity of travel or identity documents issued in the name of the requested State and suspected of being used for trafficking in [women and children] [persons]."

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 11
"Verification of documents

"Each State Party shall, at the request of another State Party and subject to the domestic laws of the requested State, verify without undue or unreasonable[2] delay the legitimacy and validity of travel or identity documents issued in the name of the requested State and suspected of being used for trafficking in persons."

Notes by the Secretariat

1. The version of article 11 contained in document A/AC.254/Add.3/Rev.2 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.3 and 4).

2. At the informal consultations held during the fifth session of the Ad Hoc Committee, a restructured version of the draft protocol was submitted by Belgium, Poland

[1]Australia and Canada suggested that several articles in this protocol should be based on articles contained in the proposals of the United States and Canada regarding the draft migrants protocol (A/AC.254/4/Add.1/Rev.1). One of the articles thus adapted was the present one.

[2]In a position paper submitted at the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences proposed that the phrase "undue or unreasonable" should be deleted in order to facilitate prompt and efficient verification of documents. In addition, the Special Rapporteur proposed that the phrase "the possession of invalid documents shall not be used as a ground to arrest, detain or prosecute trafficked persons" should be added at the end of the draft text in order to focus attention on protecting the rights and needs of trafficked persons (see A/AC.254/CRP.13).

and the United States (A/AC.254/5/Add.13), in which the present article was inserted as article 6, paragraph 3 (see also A/AC.254/4/Add.3/Revs.5 and 6, as well as note 3 by the Secretariat concerning article 8 of the present protocol).

3. At its sixth session, the Ad Hoc Committee decided to use the text of article 13 of the revised draft migrants protocol, as amended during that session (see A/AC.254/L.128/Add.2), as the basis for further discussion.

4. At the ninth session of the Ad Hoc Committee, there was general agreement to make the above-mentioned paragraph 3 of article 6 into a new article 9 bis, and the text was agreed to without modification.

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 9 bis
"[Untitled]

"States Parties shall, at the request of another State Party and in accordance with the domestic law of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used for trafficking in persons."

Notes by the Secretariat

5. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 9 bis, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II) that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

C. Interpretative note

The interpretative note on article 13 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 83) is as follows:

The term "travel documents" includes any type of document required for entering or leaving a State under its domestic law. The term "identity documents" includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.

Final provisions

Article 14. Saving clause

A. Negotiation Texts

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 15[1]
"Saving clause

"Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[2] and the 1967 Protocol[3] relating to the Status of Refugees."

Notes by the Secretariat

1. The version of article 15 contained in document A/AC.254/4/Add.3/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.2-4).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"IV. Final provisions

"Article 13[4]
"Saving clause

"1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international

[1]Australia and Canada suggested that several articles in this protocol should be based on articles contained in the proposals of the United States and Canada regarding the draft migrants protocol (A/AC.254/4/Add.1/Rev.1). One of the articles thus adapted was the present one.

[2]United Nations, *Treaty Series,* vol. 189, No. 2545.

[3]United Nations, *Treaty Series,* vol. 606, No. 8791.

[4]The text of this paragraph is based on article 5 of the draft migrants protocol.

humanitarian law and international human rights law[5] and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.[6]

"2. The application and interpretation of measures pursuant to this Protocol must be consistent with internationally recognized principles of non-discrimination."[7]

Notes by the Secretariat

2. At the ninth session of the Ad Hoc Committee, Belgium proposed that the phrase "and the principle of non-refoulement as contained therein" should be added at the end of paragraph 1 (see A/AC.254/L.201).

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 13, as amended in paragraph 2 on the basis of a proposal submitted by the Netherlands (see A/AC.254/L.241). The proposal of Belgium mentioned in note 2 by the Secretariat above was also endorsed. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text a dopted by the General Assembly (see resolution 55/25, annex II)

IV. Final provisions

Article 14
Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[8] and the 1967 Protocol[9] relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

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[5]At the sixth session of the Ad Hoc Committee, the majority of delegations expressed the view that references to international humanitarian law and international human rights law were essential. Some delegations suggested deleting the text after the words "international law". Alternatively, one delegation suggested making a reference to international law and keeping the references to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. The majority of delegations opposed those proposals.

[6]At the sixth session of the Ad Hoc Committee, some delegations proposed that a reference to bilateral and regional agreements should be added. The majority of delegations opposed that proposal.

[7]At the sixth session of the Ad Hoc Committee, an informal working group convened at the request of the Chairperson submitted a text of the non-discrimination clause (A/AC.254/L.112). It was agreed to adopt the text with an amendment submitted by Germany (A/AC.254/L.116).

[8]United Nations, *Treaty Series,* vol. 189, No. 2545.

[9]Ibid., vol. 606, No. 8791.

C. Interpretative notes

The interpretative notes on article 14 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 84 and 85) are as follows:

Paragraph 1

(a) The protocol does not cover the status of refugees.

(b) This protocol is without prejudice to the existing rights, obligations or responsibilities of States Parties under other international instruments, such as those referred to in this paragraph. Rights, obligations and responsibilities under another instrument are determined by the terms of that instrument and whether the State concerned is a party to it, not by this protocol. Therefore, any State that becomes a party to this protocol but is not a party to another international instrument referred to in the protocol would not become subject to any right, obligation or responsibility under that instrument.

Article 15. Settlement of disputes

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 15
"Settlement of disputes

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time [ninety days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Protocol, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

"3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

Notes by the Secretariat

1. The text of article 15 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which is still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 35 of the convention in part one.

2. The version of article 15 contained in document A/AC.254/4/Add.3/Rev.5 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.6).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 15
"Settlement of disputes

"1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

"2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

"3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. 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.

"4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 15 without further amendment (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 15
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. 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.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16. Signature, ratification, acceptance, approval and accession

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 8
"Signature, accession and ratification

"1. This Protocol shall be open to all States for signature at [...] from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. This Protocol is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"3. This Protocol is subject to accession by any State.[1] Instruments of accession shall be deposited with the Secretary-General of the United Nations."

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 17
"Signature, accession and ratification

"1. This Protocol shall be open for signature, by any State that has signed the Convention, at [...] from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. This Protocol is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"3. This Protocol is subject to accession by any State that has signed or acceded to the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations."

[1]States should consider whether States that are not parties to the convention will be allowed to be parties to the protocol and vice versa.

Notes by the Secretariat

1. The version of this article contained in document A/AC.254/4/Add.3/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.2-4).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 16
"Signature, ratification, acceptance, approval, accession and reservations

"1. This Protocol shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. The present Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"Option 1

"[3. No reservations may be made in respect of any provision of this Protocol.]

"Option 2

"[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.[2]]

"[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

"[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

"6. This Protocol is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

Notes by the Secretariat

2. The text of article 16 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc

[2]United Nations, *Treaty Series,* vol. 1155, No. 18232.

Committee at its sixth session and without prejudice to its content, which was still under negotiation at that session. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 36 of the convention in part one.

3. The version of article 16 contained in document A/AC.254/4/Add.3/Rev.5 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.6).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 16
"Signature, ratification, acceptance, approval and accession

"1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

"2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

"3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

"4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence."

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 16 without further amendment (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II) that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 16
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

C. Interpretative note

The interpretative note on article 16 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 86) is as follows:

While the protocol has no specific provisions on reservations, it is understood that the Vienna Convention on the Law of Treaties of 1969[3] applies regarding reservations.

[3]United Nations, *Treaty Series,* vol. 1155, No. 18232.

Article 17. Entry into force

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/4/Add.3)

"Article 9
"Entry into force

"1. This Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...][1] instrument of ratification or accession [; however, this Protocol shall not enter into force before the Convention has entered into force].

"2. For each State Party ratifying or acceding to the Protocol after its entry into force, the Protocol shall enter into force on the thirtieth day after the deposit by such State of the instrument of ratification or accession. [The Protocol can rely on the provisions of the Convention on denunciation, amendment, languages and depositary.]

"*In witness whereof*, the undersigned, being duly authorized by their respective governments, have signed this Protocol."

Second session: Vienna, 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 18
"Entry into force

"1. This Protocol shall enter into force on the thirtieth day following the date of deposit of the [...] instrument of ratification or accession with the Secretary-General of the United Nations. This Protocol shall not enter into force before the Convention has entered into force.

"2. For each State Party ratifying or acceding to the Protocol after its entry into force, the Protocol shall enter into force on the thirtieth day after the deposit by such State of the instrument of ratification or accession.

[1]States should consider whether the protocol should enter into force with the same number of instruments of ratification or accession as the convention or with fewer or more instruments.

"[The Protocol can rely on the Convention's provisions on denunciation, amendment, languages and depositary.]

"IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol."

Notes by the Secretariat

1. The version of this article contained in document A/AC.254/4/Add.3/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.2-4).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 17
"Entry into force

"1. The present Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...] instrument of ratification, acceptance, approval or accession.

"2. For each State Party ratifying, accepting, approving or acceding to the Protocol after the deposit of the [...] instrument of such action, the Protocol shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument."

Notes by the Secretariat

2. The text of article 17 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 38 of the convention in part one.

3. The version of this article contained in document A/AC.254/4/Add.3/Rev.5 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.6).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 17
"Entry into force

"1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic

integration organization shall not be counted as additional to those deposited by member States of such organization.

"2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument."

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 17, as amended. The insertion of the phrase "except that it shall not enter into force before the entry into force of the Convention" in paragraph 1, as well as of the phrase "or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later" at the end of paragraph 2, was proposed by Singapore. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 17
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18. Amendment

A. Negotiation Texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 18
"Amendment

"1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

"2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

"3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted."

Notes by the Secretariat

1. The text of article 18 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 39 of the convention in part one.

2. The version of article 18 contained in document A/AC.254/4/Add.3/Rev.5 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.6).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 18
"Amendment

"1. After the expiry of five years from the entry into force of this Protocol, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

"2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

"3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

"4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

"5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 18, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 18
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19. Denunciation

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 19
"Denunciation

"A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General."

Notes by the Secretariat

1. The text of article 19 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 40 of the convention in part one.

2. The version of article 19 contained in document A/AC.254/4/Add.3/Rev.5 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.3/Rev.6).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.3/Rev.7)

"Article 19
"Denunciation

"1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

"2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 19 without further amendment (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 19
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20. Depositary and languages

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 20
"Languages and depositary

"1. The Secretary-General of the United Nations is designated depositary of the present Protocol.

"2. The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

"IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol."

Notes by the Secretariat

1. The text of article 20 is identical to the text of the corresponding provision of the draft Convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 41 of the convention in part one.

2. The content of article 20 was not further modified. After having agreed upon a few editorial amendments (reflected in the draft of the protocol contained in document A/AC.254/4/Add.3/Rev.7), the Ad Hoc Committee considered, finalized and approved the article at its eleventh session (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex II), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999).

B. Approved text adopted by the General Assembly (see resolution 55/25, annex II)

Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Deleted articles

Notes by the Secretariat

1. The following separate articles were also discussed in the context of the negotiation process of the protocol against trafficking in persons, especially women and children, but were eventually deleted. As already indicated (see note 4 by the Secretariat concerning article 37 of the convention in part one), the objective of the present publication is to reflect and present the complete picture of the negotiations on the content of the convention and its protocols, irrespective of which provisions were finally included in the approved texts. For this reason, it has been considered appropriate to present the drafts of these articles, as well as the discussions on their content that took place before the decision was made to delete them.

Seizure and confiscation of gains

Negotiation texts

First session: 19-29 January 1999

Argentina (A/AC.254/8)

"Article 5
"Seizure and confiscation of gains

"States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of gains obtained by the criminal organization from the offences described in article 3 of this Protocol. The proceeds from such seizure and confiscation shall be allocated towards defraying the costs of providing due assistance to the victim, where deemed appropriate by States Parties and as agreed by them, in conformity with individual guarantees enshrined in domestic legislation."

Second session: 8-12 March 1999

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 5 bis[1]
"Seizure and confiscation of gains

"States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of gains obtained by the criminal organizations from the

[1]The text of this provision was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

offences described in this Protocol. The proceeds from such seizure and confiscation shall be used to defray the costs of providing due assistance to the victim, where deemed appropriate by States Parties and as agreed by them,[2] in conformity with individual guarantees enshrined in their domestic legislation."

Notes by the Secretariat

2. At the fourth session of the Ad Hoc Committee, the majority of the delegations suggested the deletion of the article. At the sixth session of the Ad Hoc Committee, several delegations opposed the deletion of the article in the restructured text proposed by Belgium, Poland and the United States (A/AC.254/5/Add.13). At the informal consultations held during the seventh session of the Ad Hoc Committee, discussion on this article was deferred pending the finalization of the articles dealing with confiscation (articles 7, 7 bis and 7 ter) in the draft convention. At the ninth session of the Ad Hoc Committee, there was general agreement to delete article 5 bis, entitled "Seizure and confiscation of gains". It was agreed that the seizure and forfeiture scheme in articles 7, 7 bis and 7 ter of the draft convention should apply, mutatis mutandis, to the protocol and that these draft provisions covered most of the same content. It was decided not to retain text calling for use of seized proceeds to defray the cost of assistance to victims because this was not consistent with compromises reached in negotiating the scheme in the draft convention and because of the practical and legal implementation problems in many States.

Cooperation with non-States parties

Negotiation texts

First session: 19-29 January 1999

Argentina (A/AC.254/8)

"Article 6
"Special aspects of international cooperation

"States Parties shall cooperate with non-States parties in the prevention, suppression and punishment of illicit international trafficking in women and children and in the protection and care of women and children victims of such unlawful acts. Accordingly, the competent authorities of States Parties shall be required to notify the competent authorities of a non-State party of cases where, on their territory, there is a child or woman who is a national of that non-State party and who has been a victim of trafficking in a State Party. States Parties shall inform the Secretary-General of the United Nations of the existence of non-governmental organizations devoted to the prevention of the offences covered by this Agreement, so that a database may be established for the purpose of permitting information exchange among these organizations and States."

[2]At the fourth session of the Ad Hoc Committee, Colombia proposed that the phrase "where deemed appropriate by States Parties and as agreed by them" should be deleted (see A/AC.254/5/Add.12).

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 13
"Cooperation with non-States Parties

"States Parties [shall][3] [are encouraged to][4] cooperate with non-States Parties to prevent and punish trafficking in [women and children] [persons] and to protect and care for victims of such trafficking. To that end, the appropriate authorities of each State Party [shall][3] [are encouraged to][4] notify the appropriate authorities of a non-State Party whenever a victim of trafficking who is a national of the non-State Party is in the territory of the State Party."

Rolling text (A/AC.254/4/Add.3/Rev.2)

"Article 13
"Cooperation with non-States Parties

"States Parties [shall] [are encouraged to] cooperate with non-States Parties to prevent and punish trafficking in persons and to protect and care for victims of such trafficking. To that end, the appropriate authorities of each State Party [shall] [are encouraged to] notify the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of the non-State Party is in the territory of the State Party."

Notes by the Secretariat

3. At the fourth session of the Ad Hoc Committee, the Special Rapporteur on violence against women, its causes and consequences submitted a position paper (A/AC.254/CRP.13), in which it was proposed that the wording "shall" rather than "are encouraged to", as well as the term "competent" rather than "appropriate" [authorities] should be used. It was also argued that the use of the phrase "in the jurisdiction of" instead of the phrase "in the territory of" would provide more comprehensive protection of trafficked women, including those on States parties' embassy grounds that are located within the territory of non-States parties.

4. At the informal consultations held during the fifth session of the Ad Hoc Committee, a restructured version of the draft protocol was submitted by Belgium, Poland and the United States (A/AC.254/5/Add.13), in which this article was incorporated as article 11.

5. The version of this article contained in document A/AC.254/4/Add.3/Rev.2 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.3 and 4).

[3]The language in square brackets was proposed in document A/AC.254/8.

[4]The language in square brackets was proposed in document A/AC.254/4/Add.3.

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.3/Rev.5)

"Article 11
"Cooperation with non-States Parties

"Option 1

"States Parties are encouraged to[5] cooperate with non-States Parties to prevent and punish trafficking in persons and to protect and care for victims of such trafficking. To that end, the authorities of each State Party shall in appropriate cases[6] notify the authorities of a non-State Party whenever a victim of such trafficking who is a national of the non-State Party is in the territory of the State Party.

"Option 2

"This Protocol encourages States Parties to cooperate with non-States Parties on the basis of equality and reciprocity for the purpose of this Protocol."[7]

Notes by the Secretariat

6. At the eleventh session of the Ad Hoc Committee, it was decided that article 11 should be deleted.

Other (stricter) measures

Negotiation texts

Second session: 8-12 March 1999

Argentina and United States of America (A/AC.254/4/Add.3/Rev.1)

"Article 14[8]
"Other measures

"1. States Parties may adopt measures stricter than those provided for in this Protocol if, in their opinion, such measures are desirable to prevent, combat and eradicate the crimes covered by this Protocol.

"2. States Parties shall take such additional legislative or other measures as they consider appropriate to prevent means of transport operated by commercial

[5]At the sixth session of the Ad Hoc Committee, there was general agreement to use the words "are encouraged to" instead of the word "shall".

[6]At the sixth session of the Ad Hoc Committee, there was general agreement to insert the words "in appropriate cases" after the word "shall".

[7]The text of this paragraph was proposed by China at the fourth session of the Ad Hoc Committee (see A/AC.254/L.52).

[8]Australia and Canada suggested that several articles in this protocol should be based on articles contained in the proposals of the United States and Canada regarding the draft migrants protocol (A/AC.254/4/Add.1/Rev.1). One of the articles thus adapted was the present one.

carriers from being used in the commission of offences established under this Protocol. Such measures shall include, in appropriate cases, fines and forfeiture to ensure that carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers to see that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. Each State Party shall consider adopting measures that permit, in appropriate cases, the revocation or denial of visas to persons, including foreign officials, known to be implicated in crimes covered by this Protocol."

Notes by the Secretariat

7. The version of this article contained in document A/AC.254/4/Add.3/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.3/Revs.2 and 3).

8. As indicated above, a restructured version of the draft protocol was submitted by Belgium, Poland and the United States (A/AC.254/5/Add.13) at the informal consultations held during the fifth session of the Ad Hoc Committee. In that version, the article was incorporated as article 12. Paragraphs 2 and 3 that had appeared in the previous drafts were moved to article 8 of the draft protocol (see note 1 by the Secretariat concerning article 11 of the present protocol). The title of new article 12 was changed from "Other measures" to "Stricter measures", which better described it. In view of the above, article 12 in document A/AC.254/5/Add.13 read as follows:

"Article 12
"Stricter measures

"States Parties may adopt measures stricter than those provided for in this Protocol if, in their opinion, such measures are desirable to prevent, combat and eradicate the crimes covered by this Protocol."

9. At the sixth session of the Ad Hoc Committee, it was agreed to delete article 12 of the restructured text.

Part Three

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Preamble

"Concerned about the threat posed by the rapid development of illegal trafficking and transport of migrants, especially by sea,

"Convinced that the illegal trafficking and transport of migrants is a particularly heinous form of transnational exploitation of individuals in distress,

"Concerned that an increasing number of migrants are being smuggled for purposes of prostitution and sexual exploitation,

"Convinced that only a global approach to this phenomenon, including socio-economic measures, can lead to the suppression of this crime,

"Desiring to supplement the Travaux préparatoires: United Nations Convention against Transnational Organized Crime by a protocol directed specifically against illegal trafficking and transport of migrants as a first step towards the eradication of this crime,"

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Draft Protocol against the Smuggling[1] *of Migrants by Land, Air and Sea,*[2]
Supplementing the United Nations Convention against
Transnational Organized Crime[3]

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[1]The term "smuggling" is used throughout the text in the light of action taken by the Commission on Crime Prevention and Criminal Justice at its eighth session on the draft protocol addressing trafficking in women and children. During the discussion at the first session of the Ad Hoc Committee, several delegations raised the issue of the translation of the term "smuggling" into languages other than English and the problems that it created. It was, therefore, agreed that attention should be paid to identifying the appropriate term to be used in languages other than English. It was also agreed that this would also be done in the glossary of terms, which was being prepared by the Secretariat. Existing texts on the subject, such as General Assembly resolutions 48/102 and 51/62 and Economic and Social Council resolution 1995/10, might be useful in that regard. The Ad Hoc Committee decided to reconsider this matter at a future session on the understanding that when agreement was reached on the wording of the title, the terminology would be adjusted in provisions throughout the text, as necessary.

[2]In its resolution 53/111, the General Assembly requested the Ad Hoc Committee, inter alia, to discuss the elaboration of an international instrument addressing illegal trafficking in and transporting of migrants, including by sea. The Ad Hoc Committee at its first session was of the view that focusing on illegal trafficking and transporting by sea would be too restrictive.

[3]The text of the present draft protocol is based on a proposal submitted by Austria and Italy containing draft elements for an international legal instrument against illegal trafficking and transport of migrants (A/AC.254/4/Add.1). It reflects all comments and proposals made or submitted by delegations at the first session of the Ad Hoc Committee.

"Preamble[4]

"The States Parties to this Protocol,

"[*(a) Taking note* of the Travaux préparatoires: United Nations Convention against Transnational Organized Crime,]

"*(b) Concerned* about the rapid development of the smuggling of migrants,

"[*(c) Alarmed* by the significant increase in the activities of transnational criminal organizations that make illicit profits by smuggling migrants across national boundaries,]

"[*(d) Recognizing* that transnational criminal organizations also use the smuggling of migrants to further numerous other criminal activities, thus bringing great harm to the States concerned,]

"*(e) Concerned* that the smuggling of migrants may lead to the misuse of established procedures for immigration, including those for seeking asylum,[5]

"[*(f) Also concerned* that the smuggling of migrants can endanger the lives or security of the individual migrants involved and entails great expense for the international community, including the costs of rescue, medical care, food, housing and transportation,]

"[*(g) Reaffirming* that States should give high priority to preventing, combating and eradicating the smuggling of migrants because of the links of such activity with transnational organized crime and other criminal activities,]

"[*(h) Convinced* that combating the smuggling of migrants requires international cooperation, the exchange of information and other appropriate measures at the national, regional and global levels,]

"*(i) Also convinced* that, to counter this phenomenon, a global approach, including socio-economic measures, is necessary,

"*(j) Further convinced* of the need to provide migrants with humane treatment and full protection of their human rights,

"*(k) Convinced* of the need for a comprehensive international legal instrument to combat all aspects of the transnational smuggling of migrants by land, air and sea,

"*(l) Stressing* the importance of full compliance by States with their obligations under the provisions of the 1951 Convention[6] and the 1967 Protocol,[7] and affirming that the present Protocol does not affect the protection afforded under the terms of the 1951 Convention and the 1967 Protocol and other provisions of international law,

"*(m) Recalling* the work of the International Maritime Organization concerning unsafe practices associated with trafficking in or transporting of illegal migrants by sea, in particular the work of the Maritime Safety Committee, which approved the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea,[8]

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[4]Several delegations were of the view that the preamble should contain provisions to address the underlying causes of the illegal movement of people and to reaffirm the principle of free movement of people. Most delegations were of the view that it would be most useful to consider the preamble after the finalization of the text of the substantive articles.

[5]Several delegations were of the view that the question of refugees should also be addressed.

[6]United Nations, *Treaty Series*, vol. 189, No. 2545.

[7]Ibid., vol. 606, No. 8791.

[8]One delegation suggested that the International Maritime Organization (IMO) circular containing the interim measures for combating unsafe practices associated with the trafficking in or transport of migrants by sea, approved in December 1998 by the IMO Maritime Safety Committee (MSC/Circ.896, annex, and also reproduced in document A/AC.254/CRP.3), could be a useful source of inspiration, but that the drafting of the text of the present instrument should not necessarily be conditioned by that circular.

"*(n)* [*Text on decisions of the International Civil Aviation Organization to be added*],

"[*(o) Reaffirming* respect for the sovereignty and territorial integrity of all States, including their right to control immigration flows,]

"*(p) Desiring* to supplement the United Nations Convention against Transnational Organized Crime by a protocol directed specifically against the smuggling of migrants, as a first step towards the eradication of this crime,[9]

"[*(q) Declaring* that such an instrument must concentrate on crime prevention and criminal justice, in particular the activities of those who organize and facilitate the smuggling of migrants,]

"*Have agreed as follows:*"

Notes by the Secretariat

1. At the sixth session of the Ad Hoc Committee, it was noted during the deliberations on the draft trafficking in persons protocol that the words "each State Party" and "States Parties" were used interchangeably in the text. The Committee decided to adopt the term "States Parties" throughout the text. For consistency, the same change was made in the draft migrants protocol, where possible.

2. At its eleventh session, the Ad Hoc Committee considered, finalized and approved the preamble, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those

[9]One delegation suggested that the preamble should be supplemented with provisions stressing the effects of illegal trafficking or smuggling on national security, as well as the need to strengthen cooperation and coordination between States.

related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the Travaux préparatoires: United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

General provisions

Article 1. Relation with the Travaux préparatoires: United Nations Convention against Transnational Organized Crime

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article P
"Except if otherwise provided for, the provisions of the Convention shall apply."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"I. General provisions relating to the smuggling of migrants by land, air and sea

"Option 1

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

"This Protocol supplements the Travaux préparatoires: United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"), done at [...], and, as regards the States Parties to this Protocol, those two instruments shall be read and interpreted together as one single instrument.[1]

[1]Pursuant to article 7, many of the provisions of the convention would be applicable to this protocol. It will be necessary to ensure, once the language of the convention is finalized, that any necessary modifications to the language of the convention are encompassed by the mutatis mutandis language in article 7. If it is determined that the corresponding provisions in the convention are not broad enough to meet the needs of the protocol, then additional provisions will need to be added to the protocol. The provisions in the convention on, for example, extradition and mutual legal assistance, protection of witnesses, measures to enhance cooperation with law enforcement authorities and law enforcement cooperation should be applicable to the subject matter of the protocol. If it is determined that the provisions of the convention on these issues are not adequate to cover the needs of the protocol, then additional articles should be added to the protocol.

"Option 2

"Article 1
"Application of the United Nations Convention against Transnational Organized Crime

"The provisions of articles [...] of the Travaux préparatoires: United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"), done at [...], shall also apply mutatis mutandis to this Protocol."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, some delegations expressed their preference for option 1 over option 2, while other delegations were of the view that it was too early to decide which option to take. One delegation suggested that the principle of mutatis mutandis application, as reflected in option 2, should be included in the text of option 1. Another delegation suggested that the article should be moved to the chapter on final provisions.

2. During a brief discussion at the eighth session of the Ad Hoc Committee, one delegation proposed that the Secretariat should be asked to prepare a combined text for possible use in all three draft protocols. Further discussion was deferred.

3. For the finalization and approval of the content of article 1 at the eleventh session of the Ad Hoc Committee, see the pertinent proposals and the discussion concerning article 1 of the trafficking in persons protocol in part two. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

4. The representative of Japan requested that the report of the Ad Hoc Committee on its eleventh session should reflect his view that there were some provisions of the convention that would not be applicable to the protocol. Examples of such provisions, at a minimum, were article 3 of the convention, since article 4 of the protocol provided otherwise; article 5 of the convention, since article 6, paragraph 2, of the protocol provided otherwise; articles 8 and 9 of the convention, since it was absolutely unnecessary to have these articles apply to the protocol; and articles 35 to 41 of the convention, since articles 20 to 25 of the protocol provided otherwise.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

I. General provisions

Article 1
Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the Travaux préparatoires: United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

C. Interpretative note

The interpretative note on article 1 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 87) is as follows:

Paragraph 2

This paragraph was adopted on the understanding that the words "mutatis mutandis" meant "with such modifications as circumstances require" or "with the necessary modifications". Provisions of the Convention that are applied to the Protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention.

Article 2. Statement of purpose

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 3[1]
"Purposes

"The purposes of this Protocol are:

"*(a)* To establish the smuggling of migrants as a criminal offence under the respective national laws of States Parties, [when committed in the context of transnational organized crime, as defined in the Convention];[2] and

"*(b)* To promote and facilitate cooperation among States Parties to prevent, investigate and prosecute the crime of smuggling migrants."

Notes by the Secretariat

1. At the informal consultations held during the fifth session of the Ad Hoc Committee, the discussion on article 3 focused on whether to remove the square brackets from subparagraph *(a)*. It was decided to retain the square brackets and add the following text, as proposed by the United States of America: "when involving an organized criminal group as defined in the Convention" (see A/AC.254/L.85/Add.2, para. 8). Concerning subparagraph *(b)*, some delegations preferred to add the words "as well as to protect the victims of such smuggling, including their human rights", while others were of the view that human rights should be covered in article 5 (see A/AC.254/L.85/Add.2, para. 9).

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[1]Some delegations were of the view that the Ad Hoc Committee would need to consider whether to link the offences covered by the migrants protocol with organized crime and, if so, how.

[2]This formulation was provisional, as it would depend on the outcome of the negotiations regarding definitions in the draft convention. The article would need to be reviewed in the light of choices made with regard to options that appeared later in the text. In addition, this article would need to be reviewed to ensure its consistency with the convention. At the fourth session of the Ad Hoc Committee, several delegations suggested removing the square brackets, while one delegation suggested deletion of the subparagraph. It was also suggested that the text contained in the square brackets should be moved to subparagraph *(b)* or to article 4. At the same session, some delegations suggested that the phrase "when life, safety or freedom of the migrant is at risk" should be inserted after the word "migrants". Some delegations suggested that the subparagraph should be focused on the prevention, investigation and prosecution of the smuggling of migrants committed by organized criminal groups. It was also suggested that the subparagraph should be moved before subparagraph *(a)*. It was further suggested that the words "as well as to protect the victim of such smuggling, including their human rights" should be inserted at the end of the subparagraph. Mexico suggested that the protection of victims should be included either in this article or as a new article 1 bis (see also A/AC.254/L.61). Several delegations supported the proposal, while other delegations considered that human rights should be covered under article 5. One delegation suggested that, as an alternative, subparagraph *(b)* of this article could be combined with article 5.

2. The version of article 3 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.2).

Fifth session: 4-15 October 1999

Rolling text (A/AC.254/4/Add.1/Rev.3)

"Article 3
"Purposes

"The purposes of this Protocol are:

"*(a)* To establish the smuggling of migrants as a criminal offence under the respective national laws of States Parties [, when involving an organized criminal group, as defined in the Convention];[3] and

"*(b)* To promote and facilitate cooperation among States Parties to prevent, investigate and prosecute the crime of smuggling migrants."

Eighth session: 21 February-3 March 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 3 of the revised draft protocol contained in document A/AC.254/4/Add.1/Rev.4, which was the same as that contained in document A/AC.254/4/Add.1/Rev.3.

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 3
"Purposes

"The purposes of this Protocol are:[4]

"*(a)* To prevent, investigate and prosecute the smuggling of migrants, when involving an organized criminal group, as defined in the Convention; and

"*(b)* To promote and facilitate cooperation among States Parties to meet these objectives; [and,

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[3]The informal consultations held during the fifth session of the Ad Hoc Committee recommended replacing the words "when committed in the context of transnational organized crime" with the words "when involving an organized criminal group".

[4]At the eighth session, it was decided to replace the text with a proposal made by France and the United States (A/AC.254/L.178), as amended by the United States during the discussions (see A/AC.254/L.186), with that text then forming subparagraphs *(a)* and *(b)* of article 3. Some delegations again expressed concern that the reference to smuggling "involving" an organized criminal group was too broad and preferred the words "when committed by". Some delegations also expressed concern that including the reference to an "organized criminal group" might result in an overly restrictive interpretation of the scope of the protocol. One delegation proposed that the order of the paragraphs should be changed to match that of article 3 of the draft firearms protocol. The current order was more consistent with the draft trafficking in persons protocol, however, which was more similar in content, and it was therefore decided to maintain the order originally proposed.

"*(c)* To promote international cooperation in the interests of the protection of the victims of such trafficking and respect for their human rights.]"[5]

Notes by the Secretariat

4. At the eighth session of the Ad Hoc Committee, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration submitted a note, arguing, inter alia, that the protocol should preserve and seek to uphold the fundamental human rights of smuggled migrants, as one of its primary objectives (see A/AC.254/27 and Corr.1, para. 15).

5. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 3, as amended after extensive discussion. The protection of the rights of migrants was again in the forefront of the debate, while it was agreed that the notion of "victims", as incorporated in the corresponding article of the trafficking in persons protocol, was not appropriate in the context of the present article. The finalization of the text of the article was based on a suggestion by Italy that comprised proposals submitted by Azerbaijan (see A/AC.254/5/Add.38), Belgium, Mexico and Norway. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 2
Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

[5]At the eighth session of the Ad Hoc Committee, there was extensive discussion of the need to incorporate text referring to the protection of victims or migrants. Most delegations supported this in principle. Many preferred placing the text in article 3, but a substantial number argued that it should be included elsewhere instead. For purposes of further discussion, it was decided to incorporate article 1, paragraph 2, of the proposed alternative text for the draft protocol submitted by Mexico at the sixth session (see A/AC.254/L.96). It was also decided that the text should be placed in square brackets pending further discussion. One delegation proposed that, if this text were to be used, the words "victims of such trafficking" should be replaced with the words "smuggled migrants" for greater consistency with the substance of the draft protocol.

Article 3. Use of terms

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Chapter I. General provisions

"Article A

"Any person who intentionally procures, for his or her profit, repeatedly and in an organized manner, the illegal entry of a person into another State of which the latter person is not a national or not a permanent resident commits the offence of 'illegal trafficking and transport of migrants' within the meaning of this Protocol.

"...

"Article C

"For the purpose of this Protocol,

"*(a)* 'Illegal entry' means the crossing of borders without disposing of the necessary requirements for legal entry into the receiving State;

"*(b)* The illegal entry into the territory of another State Party shall be considered equal to the illegal entry into the territory of the State Party concerned.

"…

"Chapter II. Special provisions on the illegal trafficking and transporting of migrants by sea

"Article E

"1. For the purpose of chapter II, 'vessel' means ship of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submarines or any other floating craft.

"2. Chapter II of this Protocol does not apply to:

"*(a)* Warships; or

"*(b)* Ships owned or operated by a State when being used for non-commercial government purposes."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 2[1]
"Definitions

"1. For the purposes of this Protocol, the following definitions shall apply:

"*(a)* 'Smuggling of migrants' shall mean the intentional procurement[2] for profit[3] of the illegal entry of a person into and/or illegal residence[4] of a person in a State of which the person is not a national or a permanent resident;[5]

"*(b)* 'Illegal entry' shall mean the crossing of borders without complying with the necessary requirements for legal entry into the receiving State;

"*(c)* 'Illegal residence' shall mean residence in the territory of a State without complying with the necessary requirements for legal residence in the State concerned;[6]

"*(d)* 'Profit' shall mean any property, benefit or advantage obtained directly or indirectly[7] as a result of the smuggling of a migrant,[8] including the expectation of or future participation in criminal[9] activities by the migrant;[10, 11]

"*(e)* 'Fraudulent travel or identity document'[12] shall mean any travel or identity document:

"(i) That has been made, falsified or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

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[1]It was considered that the articles on definition (article 2) and purpose (article 3) would need to be reviewed in the light of choices made with regard to options that appeared later in the text. In addition, those articles would need to be reviewed to ensure their consistency with the convention.

[2]One delegation considered the concept of "procurement of illegal entry" to be problematic. In the view of that delegation, it would be better to make reference to complicity in and aiding and abetting the violation of national migration laws. At the fourth session of the Ad Hoc Committee, one delegation suggested that the words "intentional procurement" should be replaced with the words "intentional and repeated procurement" or, alternatively, by "intentional and organized procurement". However, other delegations opposed that suggestion.

[3]At the fourth session of the Ad Hoc Committee, some delegations suggested deletion of the word "profit", while other delegations favoured its retention. One delegation suggested replacement of the word "profit" with the words "proceeds of crime".

[4]At the fourth session of the Ad Hoc Committee, some delegations suggested deletion of the words "illegal residence", while others supported their retention.

[5]At the fourth session of the Ad Hoc Committee, one delegation suggested deletion of the words "of a person in a State of which the person is not a national or a permanent resident".

[6]At the fourth session of the Ad Hoc Committee, some delegations suggested deletion of this subparagraph if the words "illegal residence" were deleted from subparagraph *(a)* above.

[7]At the fourth session of the Ad Hoc Committee, one delegation suggested deletion of the remainder of the subparagraph after the word "indirectly".

[8]At the fourth session of the Ad Hoc Committee, the deletion of the words "as a result of the smuggling of a migrant" was suggested.

[9]At the fourth session of the Ad Hoc Committee, some delegations suggested replacement of the word "criminal" with the word "illegal".

[10]At the fourth session of the Ad Hoc Committee, several delegations suggested that the definition of "profit" should reflect the discussions of the Ad Hoc Committee on article 2 bis of the convention regarding financial or other material benefit.

[11]At the fourth session of the Ad Hoc Committee, some delegations suggested deletion of the words "including the expectation of or future participation in criminal activities by the migrant" (see, for example, the proposal submitted by the Syrian Arab Republic, contained in document A/AC.254/L.46).

[12]At the fourth session of the Ad Hoc Committee, some delegations suggested that the draft protocol should not contain definitions of fraudulent travel or identity documents.

"(ii) That has been improperly issued[13] or obtained through misrepresentation, corruption,[14] duress or other unlawful manner;[15] or

"(iii) That is being used by a person other than the rightful holder;[16]

"*(f)* 'Vehicle' shall mean any conveyance that may be used for transportation by land or air; and

"*(g)* 'Vessel' shall mean every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.[17]

"2. For the purposes of this Protocol, each State Party shall consider the illegal entry into or illegal residence in the territory of any other State Party equal to illegal entry into or illegal residence in its own territory."[18]

Notes by the Secretariat

1. At the informal consultations held during the fifth session of the Ad Hoc Committee, the discussion on subparagraph 1 *(a)* of article 2 focused on whether the words "illegal residence" and "profit" should be deleted or retained. If those words were deleted from the text, subparagraphs *(c)* and *(d)* of paragraph 1 would also be deleted. Some delegations suggested that the element of profit should be transferred to article 4, paragraph 5, relating to aggravating circumstances. One delegation also suggested adding the phrase "or any other procedure for an illegal stay in violation of the national law of a State Party" at the end of subparagraph 1 *(a)*. With regard to subparagraph 1 *(b)*, there were three positions concerning the words "illegal entry". Mexico suggested replacing the words "illegal entry" with the words "irregular or non-documented entry". The United States suggested replacing the word "illegal" with the word "irregular", while other delegations expressed their concern that the word "irregular" did not cover all forms of "illegal" conduct. The discussion on subparagraphs 1 *(e)* and *(g)* was postponed. However, regarding subparagraph 1 *(e)* in particular, one delegation suggested either its deletion or moving it to article 4 (criminalization), while other delegations were in favour of retaining it. There was a convergence of views regarding subparagraph 1 *(f)*; however, some delegations expressed concern about the exact meaning of the term "vehicle". Another delegation suggested that the word "aircraft" should be defined separately. With regard to paragraph 2, several delegations proposed discussing the paragraph later, when article 4, on criminalization, and article 6, on jurisdiction, would be discussed or to move the paragraph to those articles.

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[13]At the fourth session of the Ad Hoc Committee, one delegation suggested that the word "altered" should be inserted after the word "issued" (see, for example, the proposal submitted by Lithuania, contained in document A/AC.254/L.55).

[14]At the fourth session of the Ad Hoc Committee, some delegations suggested deletion of the word "corruption".

[15]At the fourth session of the Ad Hoc Committee, one delegation suggested deletion of this subparagraph.

[16]At the fourth session of the Ad Hoc Committee, some delegations suggested deletion of this subparagraph, while another delegation recommended moving it to article 4.

[17]The source of the definition of "vessel" was the definition of "ship" contained in paragraph 2 of the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea, approved in December 1998 by the Maritime Safety Committee of the International Maritime Organization (MSC/Circ.896, annex, and also reproduced in document A/AC.254/CRP.3). At the fourth session of the Ad Hoc Committee, several delegations suggested that, for the wording of the interim measures, the United Nations Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1954, No. 33480) should be applied. It was also suggested that the words "naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service" should be replaced with the words "or any other government ship".

[18]At the fourth session of the Ad Hoc Committee, one delegation suggested that this subparagraph should be either deleted or moved to the chapter on jurisdiction or criminalization.

2. The version of article 2 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2-4).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 2
"Definitions

"For the purposes of this Protocol, the following definitions shall apply:

"*(a)* 'Smuggling of migrants' shall mean the procurement of the illegal entry into or illegal residence of a person in [a] [any] State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit;[19]

"*(b)* 'Illegal entry' shall mean the crossing of borders without complying with the necessary requirements for legal entry into the receiving State;[20]

"*(c)* 'Illegal residence' shall mean remaining in the territory of a State without complying with the necessary requirements for legally remaining in the State concerned;[21]

[*Old subparagraph (d) has been deleted.*][22]

"*(d)* 'Fraudulent travel or identity document' shall mean any travel or identity document:[23]

"(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State;[24] or

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[19]At the eighth session of the Ad Hoc Committee, new text was adopted for this provision, based on the proposal of Austria and Italy (A/AC.254/L.179). There was agreement that wording that included reference to direct and indirect benefits was preferable to the word "profit", but some delegations reserved their position on the use of the words "in any State Party" pending further consultations. Several delegations expressed concern that the protocol should focus on illegal entry rather than on illegal residence and preferred the text proposed by Mexico. Discussion on the question continued and the Chairperson indicated that, in her view, there was still room to take those concerns into account in the text. Mexico concurred in this, but reiterated that the scope of the protocol and the extent to which it would deal with illegal residence were matters of serious concern to it and not just questions of terminology. Several delegations expressed interest, but reserved comment on Mexico's proposal pending translation. The proposal by Mexico read as follows: "'Smuggling of migrants' shall mean the procurement of irregular entry with the purpose of permitting the illegal stay or illegal residence in a State Party of which the person is not a national, a temporary visitor or a permanent resident in order to obtain [, directly or indirectly, a financial or other material benefit] [a profit]".

[20]During the eighth session of the Ad Hoc Committee, Mexico proposed the use of the words "irregular entry" instead of "illegal entry", but it was decided to retain the existing text.

[21]New text for this provision was agreed at the eighth session of the Ad Hoc Committee on the basis of text prepared by an informal working group (see A/AC.254/L.180).

[22]At the eighth session of the Ad Hoc Committee, subparagraph *(d)* of this article was deleted following the insertion of new text into subparagraph *(a)*. That text replaced the word "profit" with a reference to financial and other benefits based on subparagraph *(a)* of article 2 bis of the draft convention (see A/AC.254/L.179). A few delegations preferred the greater certainty of expressly defining "profit" in the draft protocol.

[23]At the eighth session, one delegation suggested adding the words "used for international travel" at the end of this subparagraph. Most delegations were concerned that this would be too restrictive, as purely domestic documents frequently played a role in migrant smuggling.

[24]At the eighth session of the Ad Hoc Committee, there was lengthy discussion about the meaning of the words "falsified", "falsely made" and "altered". The intention was to deal with the acts of unauthorized persons and it was decided to use the words "falsely made or altered". It was agreed that this included not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents.

"(ii) That has been improperly issued or obtained through misrepresentation, corruption, duress or any other unlawful manner; or

"(iii) That is being used by a person other than the rightful holder;[25]

"*(e)* 'Vehicle' shall mean any conveyance that may be used for transportation by land or air; and[26]

"*(f)* 'Vessel' shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.[27]

"[*Paragraph 2 has been deleted.*]"[28]

Eleventh session: 2-28 October 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 4 of the revised draft protocol contained in document A/AC.254/4/Add.1/Rev.6, which was the same as that contained in document A/AC.254/4/Add.1/Rev.5.

Mexico (A/AC.254/L.246)

Mexico made the following proposal concerning article 2 (Definitions):

"1. Amend subparagraph *(a)* to read:

'*(a)* "Smuggling of migrants" shall mean procurement of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit;'

The phrase 'in order to obtain, directly or indirectly, a financial or other material benefit' will need to be re-examined in the context of the protocol.

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[25]At the eighth session of the Ad Hoc Committee, many delegations felt that the text of subparagraphs *(d)* (ii) and (iii) of article 2 should be dealt with under the provisions of article 4 that criminalized the misuse of documents. Some delegations pointed out that these subparagraphs were intended to define as "fraudulent" a document that was being misused, even if the document itself was genuine.

[26]At the eighth session of the Ad Hoc Committee, discussion continued on the question of whether it was appropriate to define aircraft as a type of vehicle. Some delegations proposed to define aircraft separately. Most delegations would be satisfied with either one or two definitions, provided that the articles that at present referred to vehicles, namely, articles 9 (Additional legislative and administrative measures), 11 (Prevention) and 14 (Training), included aircraft, if these were defined separately. It was decided to retain the existing text pending a review of those articles. China pointed out that the definition of "vessel" in the draft protocol and the International Civil Aviation Organization's definition of "aircraft" both excluded police and military vessels or aircraft and suggested that a similar exclusion should be applied to vehicles and aircraft in the draft protocol.

[27]At the eighth session of the Ad Hoc Committee, there were proposals to replace the word "vessel" with the word "ship" and to exclude vessels without propulsion, but it was decided to retain the text as it was.

[28]Paragraph 2 was deleted at the eighth session of the Ad Hoc Committee. Some delegations felt that the substance of the paragraph should be dealt with, if at all, in article 6. Others noted that the need for a requirement that States parties should treat illegal entry or residence involving other States in the same way as illegal entry or residence involving their own territories depended in part on whether the words "in any State Party" or "in a State Party" were included in article 2, paragraph 1*(a)*.

"2. Subparagraph *(b)* would remain unchanged.

"3. Subparagraph *(c)* should be deleted."

Recommendations of the informal working group on article 2, submitted at the request of the Chairperson (A/AC.254/L.255)

The informal working group made the following recommendations concerning article 2.

"1. The informal working group proposes to continue work on article 2 on the basis of the following text:

'Article 2
'Definitions

'For the purposes of this Protocol,

'*(a)* "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

'*(b)* "Illegal entry" shall mean the crossing of borders without complying with the necessary requirements for legal entry into the receiving State.'

"2. The words 'or illegal residence' should be deleted from subparagraph *(a)*.

"3. Subparagraph *(c)* should be deleted."

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 2, as amended. The definition of "vehicle" was deleted. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 3
Use of terms

For the purposes of this Protocol:

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

C. Interpretative notes

The interpretative notes on article 3 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 88-90) are as follows:

Subparagraph (a)

(a) The reference to "a financial or other material benefit" as an element of the definition in subparagraph *(a)* was included in order to emphasize that the intention was to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties. It was not the intention of the protocol to criminalize the activities of family members or support groups such as religious or non-governmental organizations.

Subparagraph (c)

(b) The term "travel document" includes any type of document required for entering or leaving a State under its domestic law and the term "identity document" includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.

(c) The words "falsely made or altered" should be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. Furthermore, the intention was to include both documents that had been forged and genuine documents that had been validly issued but were being used by a person other than the lawful holder.

Article 4. Scope of application

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 5
"Scope of application

"1. This Protocol applies to the smuggling of migrants when committed in the context of organized crime as defined in article 2 of the Convention.[1]

"2. The provisions of this Protocol shall be without prejudice to the obligations of States Parties under the 1951 Convention[2] and the 1967 Protocol[3] relating to the Status of Refugees."

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, some delegations suggested the inclusion in article 5 of a saving clause similar to that contained in article 15 of the draft trafficking in persons protocol. (See, for example, the proposal of Belgium, contained in document A/AC.254/L.35; see also the note submitted subsequently, during the eighth session of the Ad Hoc Committee, by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration contained in document A/AC.254/27 and Corr.1, para. 17). Other delegations recommended placing such a saving clause at the end of the protocol. Morocco suggested including the principle of non-refoulement in article 4 (see A/AC.254/L.60). That delegation recalled that reference to humanitarian law was necessary. In the same context, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration characterized the principle of non-refoulement as the core of international refugee protection and strongly advocated the inclusion of a provision to the effect that illegality of entrance into a State would not adversely affect a person's claim for asylum. It was further suggested that, in order to make such a provision effective, States parties should be required to ensure that smuggled migrants were given full oppor-

[1]It was considered that this article will need to be reviewed in the light of choices made with regard to options that appeared later in the text. In addition, the article would need to be reviewed to ensure its consistency with the convention.

[2]United Nations, *Treaty Series*, vol. 189, No. 2545.

[3]Ibid., vol. 606, No. 8791.

tunity, including through the provision of adequate information, to make a claim for asylum or to present any other justification for remaining in the country, and that such claims were considered on a case-by-case basis (see A/AC.254/27 and Corr.1, para. 18).

2. The version of article 5 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2-4).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 5
"Scope of application

"[Except as otherwise provided,] this Protocol applies to offences established under this Protocol [that involve] [that are committed by][4] an organized criminal group as defined in the Convention.[5, 6]

Notes by the Secretariat

3. After the finalization and approval of the text of the transnational organized crime convention at its tenth session, at its eleventh session the Ad Hoc Committee considered, finalized and approved article 5 of the migrants protocol, as amended *(a)* on the basis of a proposal submitted by Azerbaijan (see A/AC.254/5/Add.38) and *(b)* with the inclusion of a specific reference to "the protection of the rights of persons who have been the object of such offences" to ensure consistency with the content of article 3 (finally article 2) of the protocol (Statement of purpose). The general agreement was to adopt mutatis mutandis the approach adopted in the corresponding article 4 of the trafficking in persons protocol. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

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[4]The major outstanding issue with respect to the application of the protocol remained the question of whether it would apply only to cases where an offence had actually been committed by an "organized criminal group" or also to cases where there was some less direct involvement. The Chairman pointed out that it would be necessary to resolve that issue at the next session and asked delegations to take the matter up with their Governments in the interim. A majority of delegations that spoke on this point supported the words "that involve". In their view, the protocol should have a relatively broad application. Many pointed out that when States parties sought to apply the protocol in specific cases, they would be seeking assistance with an ongoing investigation. At such times, it might not be known whether organized crime was involved or it might be impossible to meet any basic standard of proof as a prerequisite to obtaining assistance under the protocol. Those who preferred the words "when committed by" felt that the protocol should apply to a narrower range of cases. A large majority of the delegations speaking on both sides of the issue pointed out that the same question arose in other articles, in particular article 4, and indicated that, once the problem was resolved, the same rule and the same language should be used in other articles to make them consistent.

[5]The new text of this paragraph was based on a compromise text submitted by Mexico and the United States at the eighth session of the Ad Hoc Committee. The words "Except as otherwise provided" were proposed to allow some flexibility to extend the application of the protocol further with respect to specific articles should this prove necessary. Some delegations had concerns about this and it was decided to place the text in square brackets pending an assessment, as other articles were reviewed, as to whether it would actually be necessary. Germany noted that this provision might not be needed at all, if the nature of the required link to offences committed by transnational organized criminal groups was clarified in articles 3 and 4.

[6]Paragraph 2, which appeared in previous drafts, was deleted and replaced with a new article 15 bis.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 4
Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5. Criminal liability of migrants

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article B

"...

"2. Any person whose illegal entry is procured or intended by such trafficking and transport shall not become punishable on account of such trafficking and transport."

Eighth session: 21 February-3 March 2000

Mexico (A/AC.254/L.160)

"Article (...)[1]
"Safeguard

"1. A migrant who is the subject of illegal trafficking and transport shall not become punishable under this Protocol [instrument].

"2. The relatives of the migrant shall not become punishable for acts, committed by an organized criminal group of which the relative is not a member, whose purpose is the illegal trafficking in and transporting of that migrant.[2]

"3. The relatives of the migrant shall not become punishable by reason of the profits obtained by an organized criminal group from those relatives as a result of the illegal trafficking in and transporting of that migrant."

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[1]This text previously appeared as article 2 in document A/AC.254/L.96.

[2]Initially, criminal liability of migrants was dealt with in paragraph 7 of article 4 of the draft protocol. New text for this provision was produced by a working group at the eighth session of the Ad Hoc Committee (see A/AC.254/L.193). The working group did not address the question of non-criminalization of the immediate members of the family of the migrant proposed by Mexico (see A/AC.254/L.160).

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 3 bis
"Criminal liability of migrants

"Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been smuggled.[3]"

Notes by the Secretariat

1. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 3 bis, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

2. It should be noted that the representative of Azerbaijan requested that the report of the Ad Hoc Committee on its eleventh session should indicate that his country reserved its right to make an interpretative statement or reservation regarding article 5 of the protocol.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 5
Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

[3]The reference to the conduct to be criminalized would depend on the choice to be made regarding the content of article 2.

Article 6. Criminalization

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Chapter I. General provisions

"Article A

"Any person who intentionally procures, for his or her profit, repeatedly and in an organized manner, the illegal entry of a person into another State of which the latter person is not a national or not a permanent resident commits the offence of 'illegal trafficking and transport of migrants' within the meaning of this Protocol.

"Article B

"1. Any person who attempts to commit or who commits an act constituting participation as an accomplice in any such trafficking and transport, in an attempt to commit such trafficking and transport or in organizing or ordering others to commit such trafficking and transport likewise commits an offence within the meaning of this Protocol.

"..."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 4
"Criminalization

"1. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as a criminal offence the smuggling of migrants[1]

[1]One delegation suggested that not only individuals but also legal entities (legal persons) should be covered because of the potential involvement of travel companies or corporations.

[, when committed in the context of transnational organized crime, as defined in the Convention].[2]

"2. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as a criminal offence [, when committed in the context of transnational organized crime, as defined in the Convention]:[2]

"*(a)* The intentional making, procuring or providing of a fraudulent travel or identity document; and

"*(b)* Knowing that a travel or identity document is fraudulent:

"(i) Using, possessing, dealing with or acting on such a document; and

"(ii) Causing a fraudulent travel or identity document to be used, possessed, dealt with or acted on.

"3. Each State Party shall also adopt the necessary legislation or other measures to establish as a criminal offence the following conduct:

"*(a)* Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"*(b)* Participating as an accomplice in an offence set forth in paragraphs 1 and 2 of this article;[3]

"*(c)* Organizing or directing others to commit an offence set forth in paragraphs 1 and 2 of this article; or

"[*(d)* In any other way contributing to the commission of an offence set forth in this article by a group of persons acting with a common purpose; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned].[4]

"4. States Parties shall make the commission of the offences in this article liable to sanctions that take into account the grave nature of the offences.

"5. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the smuggling of migrants in circumstances that endanger, or are likely to endanger, the life or safety of persons whose illegal entry is procured or intended.

"6. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the exploitation or inhuman or degrading treatment of persons whose illegal entry is procured or intended.

"7. A person whose illegal entry and/or illegal residence is procured or intended by the smuggling of migrants shall not become punishable under this Protocol."[5]

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[2]This formulation was provisional, as it would depend on the outcome of the negotiations regarding definitions in the draft convention.

[3]Some delegations were of the view that, notwithstanding paragraph 6 of this article, the concept of participation required clarification.

[4]This subparagraph was proposed by Canada and the United States. The language was taken from article 2, paragraph 3 *(c)*, of the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) and was intended to ensure that the protocol would be broad enough to encompass both conspiracy and participation in a criminal organization.

[5]Some delegations expressed concern that this paragraph might interfere with the operation of national immigration laws.

India (A/AC.254/L.58)

India proposed the following amendments concerning article 4 (Criminalization).

1. Replace paragraph 2 with the following:

"2. States Parties that have not yet done so shall adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"*(a)* Intentionally making, procuring or providing a fraudulent travel or identity document for the purpose of smuggling migrants; or

"*(b)* Causing a fraudulent travel or identity document to be used, possessed, dealt with or acted upon for the purpose of smuggling migrants."

2. Replace paragraph 3 with the following:

"3. Each State Party shall also adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"*(a)* Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraphs 1 and 2 of this article;

"*(b)* Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"*(c)* Participating as an accomplice in an offence set forth in this article; or

"*(d)* In any other way contributing to the commission of an offence set forth in this article."

Canada (A/AC.254/L.59)

Canada proposed the following revised version of paragraph 7 of article 4:

"A person whose illegal entry [or residence] is procured, or intended to be procured, shall not be held responsible for an offence established in accordance with paragraph 1 of this article on the basis of the mere fact of having been smuggled. Nothing in this paragraph shall prevent a State Party from prosecuting a person whose conduct constitutes an offence under any other provision of this Protocol or under the domestic law of the State Party concerned."

Mexico (A/AC.254/L.61)

"Article [...]
"Criminalization

"1. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as a criminal offence illegal trafficking in migrants when committed in the context of transnational organized crime.

"2. States Parties that have not yet done so shall adopt the necessary legislation or other measures to consider the following activities as aggravating factors:

"*(a)* Illegal trafficking in migrants in circumstances that endanger, or are likely to endanger, the life or safety of the migrants;

"*(b)* Subjection of migrants to sexual exploitation, forced labour or inhuman or degrading treatment.

"3. A migrant whose irregular or undocumented entry is procured or intended by illegal trafficking shall not become punishable under this Protocol."

Rolling text (A/AC.254/4/Add.1/Rev.2)

"Article 4
"Criminalization

"Option 1

"1. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as a criminal offence the smuggling of migrants [, when committed in the context of transnational organized crime, as defined in the Convention].[6]

"2. States Parties that have not yet done so shall[7] adopt the necessary legislation or other measures to establish as a criminal offence [, when committed in the context of transnational organized crime, as defined in the Convention]:[8]

"*(a)* The intentional making, procuring or providing of a fraudulent travel or identity document; and

"*(b)* Knowing that a travel or identity document is fraudulent:[9]

"(i) Using, possessing,[10] dealing with or acting on[11] such a document; and

"(ii) Causing a fraudulent travel or identity document to be used, possessed, dealt with or acted on.

"Option 2[12]

"1. States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish the following conduct as criminal offences when committed by an organized criminal group:

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[6]At the fourth session of the Ad Hoc Committee, many delegations suggested removing the square brackets so as to stress that the protocol should commit States parties to criminalizing the smuggling of illegal migrants only in the context of transnational organized crime. Other delegations preferred to retain the square brackets on the grounds that there was no definition of transnational organized crime in the convention.

[7]At the fourth session of the Ad Hoc Committee, one delegation suggested replacing the word "shall" with the word "may".

[8]At the fourth session of the Ad Hoc Committee, many delegations suggested removing the square brackets, while some preferred to retain them. Several delegations suggested merging paragraph 2 with paragraph 1 of this article, while one delegation recommended moving this paragraph to article 2. Another delegation suggested deletion of this paragraph.

[9]At the fourth session of the Ad Hoc Committee, many delegations suggested deletion of this subparagraph, while other delegations suggested adding the phrase "for the purpose of smuggling another person across borders".

[10]At the fourth session of the Ad Hoc Committee, one delegation suggested insertion of the word "trading" after the word "possessing".

[11]At the fourth session of the Ad Hoc Committee, one delegation suggested deletion of the words "dealing with or acting on".

[12]At the fourth session of the Ad Hoc Committee, South Africa suggested including this wording as an option in the main body of the text, in order to combine paragraphs 1 and 2 of the article.

"*(a)* The smuggling of migrants; and

"*(b)* The intentional:

"(i) Making, procuring or providing of a fraudulent travel or identity document;

"(ii) Using, possessing, dealing with or acting on such a document; or

"(iii) Causing such a document to be used, possessed, dealt with or acted on, for the purpose of smuggling migrants.

"3. Each State Party shall[13] also adopt the necessary legislation or other measures to establish as a criminal offence the following conduct:

"*(a)* Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"*(b)* Participating as an accomplice[14] in an offence set forth in paragraphs 1 and 2 of this article;

"*(c)* Organizing or directing others to commit an offence set forth in paragraphs 1 and 2 of this article;[15] or

"[*(d)* In any other way contributing to the commission of an offence set forth in this article by a group of persons acting with a common purpose; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned].

"4. States Parties shall make the commission of the offences in this article liable to sanctions that take into account the grave nature of the offences.

"Option 1

"5. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the smuggling of migrants in circumstances that endanger, or are likely[16] to endanger, the life or safety of persons whose illegal entry is procured or intended.[17]

"6. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the exploitation or inhuman or degrading treatment of persons whose illegal entry is procured or intended.[18]

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[13]At the fourth session of the Ad Hoc Committee, one delegation suggested replacing the word "shall" with the words "are encouraged to adopt, as appropriate,".

[14]At the fourth session of the Ad Hoc Committee, one delegation suggested deletion of the words "as an accomplice".

[15]At the fourth session of the Ad Hoc Committee, some delegations suggested insertion of the words "or attempting to commit such an offence" after the word "article" and, in turn, deletion of subparagraph *(a)*.

[16]At the fourth session of the Ad Hoc Committee, one delegation suggested insertion of the word "reasonably" before the word "likely".

[17]At the fourth session of the Ad Hoc Committee, one delegation suggested that repeated commission of the offence of the smuggling of migrants should be included as an aggravating circumstance.

[18]At the fourth session of the Ad Hoc Committee, some delegations drew attention to the fact that this subparagraph might overlap with provisions of the draft trafficking in persons protocol.

"Option 2[19]

"5. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as an aggravating circumstance the smuggling of migrants in circumstances:

"*(a)* That endanger, or are likely to endanger, the life or safety of persons whose illegal entry is procured or intended; or

"*(b)* That entail inhuman or degrading treatment of such persons.

"Option 1

"7. A person whose illegal entry and/or illegal residence is procured or intended by the smuggling of migrants shall not become punishable under this Protocol.[20]

"Option 2[21]

"7. A person whose illegal entry and/or illegal residence is procured or intended by the smuggling of migrants shall not become punishable under [this Protocol].[22]

"7 bis. Nothing in this Protocol shall prevent a State Party from taking action against a person whose conduct constitutes an offence under [its domestic law or][23] any other provision on criminalization of this Protocol."

Fifth session: 4-15 October 1999

Canada and United States of America (A/AC.254/L.76)

Canada and the United States proposed that option 2 for paragraph 1 of article 4 of the draft migrants protocol should be revised to read as follows:

"1. States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish the following conduct as criminal offences when involving an organized criminal group:

"*(a)* The smuggling of migrants; and

"*(b)* The intentional:

"(i) Making of a fraudulent travel or identity document used for international travel;

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[19]At the fourth session of the Ad Hoc Committee, Austria suggested including this wording as an option in the main body of the text, in order to combine paragraphs 5 and 6 of the article.

[20]Some delegations expressed concern that this paragraph might interfere with the operation of national immigration laws. At the fourth session of the Ad Hoc Committee, several delegations stressed that, in their view, this provision was important, and that all other provisions of the protocol should therefore be consistent with this provision. It was emphasized that the goal of the protocol was to function as an instrument that would enable States to prosecute smugglers effectively. In that context, it was evident that criminalization of the migrant would not be intended or desirable. However, several delegations were apprehensive about the possibility of the protocol granting immunity to illegal migrants, especially if they had committed a crime, including the smuggling of other illegal migrants.

[21]The text of this option was not discussed at the fourth session of the Ad Hoc Committee. However, there was extensive discussion of the subject among interested delegations, the results of which were reflected in the text and the relevant footnotes.

[22]Some delegations thought that reference to the protocol would be inconsistent with the agreed intention of paragraph 7 bis of this option, which was to permit prosecution of those migrants who participated in criminal activities, such as the smuggling of migrants.

[23]Some delegations considered this phrase to be inconsistent with the agreed intention of paragraph 7 of this option, in that the phrase, under their interpretation, would allow domestic legal provisions that criminalized illegal entry to override the protocol caveat that migrants per se should not be subject to sanction.

"(ii) Procuring or possessing of such a document for the purpose of providing it to persons involved in the smuggling of migrants; or

"(iii) Acting on such a document when such conduct is committed by a government official."

France (A/AC.254/L.77)

France proposed that paragraph 7 of article 4 should read as follows:

"A person whose illegal entry or illegal residence is procured or intended to be procured shall not be held responsible for an offence established in accordance with this Protocol in respect of the illegal condition of the person's entry or residence. Nothing in this paragraph shall prevent a State Party from prosecuting a person for other activities that would constitute an offence under the domestic law of the State Party concerned."

Notes by the Secretariat

1. At the informal consultations held during the fifth session of the Ad Hoc Committee, with regard to article 4, paragraph 1, many delegations agreed with the proposal submitted by Canada and the United States (see A/AC.254/L.76), except for certain wording such as the words "international travel" in subparagraph *(b)* (i), the words "possessing" and "involved" in subparagraph *(b)* (ii) and the words "acting on" in subparagraph *(b)* (iii). Some delegations suggested that merely "possessing" the document should not be criminalized. In addition, there was a discussion on whether the words "organized criminal group" should be in square brackets. One delegation suggested that the words "transnational organized crime" should be kept in square brackets and that the words "organized criminal group" should be inserted in square brackets next to those words. Several delegations suggested that the criminal conduct should be linked to the organized criminal group so that the migrants would not be criminalized and therefore preferred a proposal submitted by the Russian Federation that read "States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as criminal offences the activities of organized criminal groups relating to the organization, procuring and actual effectuation of the smuggling of migrants". The proposal submitted by India (A/AC.254/L.58) was also supported. Mexico strongly suggested retaining option 1. However, the majority of delegations were in favour of deleting option 1, while one delegation suggested retaining paragraph 1 of that option. One delegation suggested rephrasing subparagraph *(b)* (iii) to read as follows: "Causing a third party to use, possess, deal with or act on such a document for the purpose of smuggling migrants". With regard to paragraph 3, there was a convergence of views on subparagraphs *(a)*, *(b)* and *(c)*. One delegation suggested combining those subparagraphs. Many delegations were of the view that subparagraph *(d)* needed to be clarified. There was no objection to paragraph 4. With regard to paragraph 5 (and, in the case of option 1, paragraph 6), most delegations preferred option 2, while the Syrian Arab Republic strongly suggested adding the words "and smuggling of" after the word "treatment" in subparagraph 5 *(b)* of option 2. One delegation suggested that the element of "exploitation" in option 1 should be included in option 2. Regarding paragraph 7, there was consensus that migrants were victims and should therefore not be criminalized. It was also agreed, however, that migrants should not be given full immunity. Many delegations supported the proposal submitted by France (A/AC.254/L.77); however, several delegations were concerned about the clarity of the words "other activities" in that proposal. Other delegations suggested replacing paragraph 7 with the proposal submitted by Canada (A/AC.254/L.59), which the United States amended by inserting "*(a)*" after the words "paragraph 1" and by inserting the words "or taking any other action against" after the word "prosecuting". Some delegations supported a

proposal submitted by Morocco (A/AC.254/L.60), in which new text was introduced as paragraph 8 of article 4 or a new article 4 bis. Others opposed that proposal.

Eighth session: 21 February-3 March 2000

Notes by the Secretariat

2. The version of article 4 contained in document A/AC.254/4/Add.1/Rev.2 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.3 and 4).

Austria, Canada, France, Germany, Italy, Netherlands and United States of America (A/AC.254/L.188)

As an alternative to paragraph 7 of article 4, Austria, Canada, France, Germany, Italy, the Netherlands and the United States proposed to insert the following text in paragraph 2 of article 3 (Purposes):

"Nothing in this Protocol shall be interpreted as requiring States Parties to take measures against a migrant for the mere fact of having been smuggled."

Paragraph 7 of article 4 would consequently be deleted.

Amendment to article 4, submitted by the Chairman (A/AC.254/L.191)

The Chairman proposed to amend paragraph 3 of article 4 to read as follows:

"3. Each State Party shall also, subject to the basic concepts of its legal system, adopt the necessary legislation or other measures to establish as a criminal offence participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with paragraphs 1 and 2 of this article."[24]

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 4
"Criminalization

"1. States Parties that do not already have in their domestic law offences covering the conduct described in this paragraph shall adopt the necessary legislation or other measures to establish as criminal offences when committed intentionally [and when involving an organized criminal group]:[25]

[24]At the eighth session of the Ad Hoc Committee, it was decided to replace the former text of paragraph 3 of article 4 with text based on the corresponding agreed text of the revised draft convention, namely, article 4, paragraph (1) *(d)* (see A/AC.254/4/Rev.7). Further discussion was deferred pending the revision.

[25]Discussions were continuing with respect to the question of whether the protocol should apply to offences that "involved" an organized criminal group in some general way or only to offences actually "committed by" such a group. During the eighth session of the Ad Hoc Committee, a majority of delegations favoured the broader language "when involving" and felt that consistent language should be used throughout the protocol on this question (see also above, concerning article 4 of the protocol (Scope of application)).

"*(a)* The smuggling of migrants;

"*(b)* When committed for the purpose of enabling the smuggling of migrants:

"(i) Producing a fraudulent travel or identity document;

"(ii) Procuring, providing or possessing such a document.[26, 27]

[*The text proposed for paragraph 2 has been deleted.*][28]

"2. Each State Party shall also adopt the necessary legislation or other measures to establish as a criminal offence the following conduct:[29]

"*(a)* Attempting to commit an offence set forth in paragraph 1 of this article;

"*(b)* Participating as an accomplice in an offence set forth in paragraph 1 of this article;

"*(c)* Organizing or directing others to commit an offence set forth in paragraph 1 of this article; or

"[*(d)* In any other way contributing to the commission of an offence set forth in this article by a group of persons acting with a common purpose; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.]

"3. States Parties shall make the commission of the offences in this article liable to sanctions that take into account the grave nature of the offences.

[*Option 1 of paragraphs 5 and 6 has been deleted.*][30]

"4. States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as aggravating circumstances to the offence of the smuggling of migrants circumstances:[31]

"*(a)* That endanger, or are likely to endanger, the life or safety of persons whose illegal entry is procured or intended; or

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[26]The text of this provision was produced by an informal working group set up during the eighth session of the Ad Hoc Committee (see A/AC.254/L.173). It replaced both of the options contained in document A/AC.254/4/Add.1/Rev.4. One delegation expressed concern that this provision might include offences of simple possession of illicit documents, a matter for domestic law. It was pointed out in response, that the offence of possession under subparagraph *(b)* (ii) would only apply where the possession in question was for the purpose of smuggling migrants, as set out in subparagraph *(a)*.

[27]At the eighth session of the Ad Hoc Committee, one delegation suggested that violation of human rights should be established as a crime under this article, a suggestion that was opposed by several delegations on the ground that it was already covered under paragraph 5.

[28]At the eighth session of the Ad Hoc Committee, option 1, which had contained a proposed paragraph 2, was excluded from further consideration.

[29]As indicated above, at the eighth session of the Ad Hoc Committee, there was agreement in principle that the text of this article should correspond to parallel text in the draft convention. It was decided to defer further discussion pending completion of that text.

[30]At the eighth session of the Ad Hoc Committee, it was decided to exclude former option 1 of paragraphs 5 and 6 from further discussion. As a consequence, the following paragraph, proposed at that session as new paragraph 7 bis, has been renumbered paragraph 5.

[31]At the eighth session of the Ad Hoc Committee, proposals from Australia and Colombia for this provision were discussed at length. The major issue was whether the circumstances listed would be aggravating factors for all offences under the protocol or only for the principal offence of smuggling migrants. The text eventually agreed to is based on the second, narrower approach and compromise drafting.

"*(b)* That entail [exploitation or][32] inhuman or degrading treatment of such persons.

"5. Nothing in this Protocol shall prevent States Parties from taking measures against a person whose conduct constitutes an offence under their domestic law."[33]

Eleventh session: 2-28 October 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 4 of the revised draft protocol contained in document A/AC.254/4/Add.1/Rev.6, which was the same as that contained in document A/AC.254/4/Add.1/Rev.5.

Recommendations of the informal working group submitted at the request of the Chairperson (A/AC.254/L.255)

The informal working group proposed to continue work on the basis of the following text:

"Article 4
"Criminalization

"...

"*(c)* Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State, by the means mentioned in subparagraph *(b)* of this article or any other illegal means.

"*Notes*

"1. The concept of illegal residence was considered with the addition of a new subparagraph *(c)* in paragraph 1 of article 4.

"2. The following words should be added at the end of the chapeau of paragraph 1 of article 4: "in order to obtain, directly or indirectly, a financial or other material benefit.

"3. The *travaux préparatoires* should indicate that the reference to "financial or other material benefit" was introduced in paragraph 1 of article 4 in order to emphasize that that provision of the protocol was not intended to criminalize humanitarian support given to migrants, in particular by non-governmental organizations or churches or support given on the basis of close family ties.

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[32]This proposal was made by Colombia at the eighth session of the Ad Hoc Committee. There was no consensus about whether these words should be added or not and it was decided to place them in square brackets for further consideration. Some delegations felt that this language would provide better protection for migrants, while others felt that all possible cases of exploitation would be dealt with by the proposed trafficking in persons protocol and that the content of that instrument should not be duplicated here.

[33]The text of this paragraph was proposed as new paragraph 7 bis by a working group set up at the request of the Chairman during the eighth session of the Ad Hoc Committee (see A/AC.254/L.193) and was adopted at that session for purposes of further discussion.

"4. The working group agreed that the protocol should include reference to the offences established in accordance with article 4 when smuggling of migrants was mentioned, in particular in [article 3 bis]; article 8, paragraph 2 *(a)*; article 10, paragraphs 1 and 3 *(b)*, *(d)*, *(e)* and *(f)*; article 13; article 14, paragraphs 2 *(c)* and 3; and article 15.

"5. The *travaux préparatoires* should indicate that any illegal means other than those set forth in article 4, paragraph 1 *(c)*, should be as defined in domestic law."

Recommendations of the informal working group on article 4, submitted at the request of the Chairperson (A/AC.254/L.258)

The informal working group proposed to continue work on article 4 on the basis of the following text:

"Article 4
"Criminalization

"...

"2. ...

"*(a)* Attempting to commit an offence set forth in paragraph 1 *(a)*, *(b)* (i) or *(c)* of this article and, subject to the basic concepts of its legal system, attempting to commit an offence set forth in paragraph 1 *(b)* (ii) of this article;

"*(b)* Participating as an accomplice in an offence set forth in paragraph 1 *(a)*, *(b)* (i) or *(c)* of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence set forth in paragraph 1 *(b)* (ii) of this article;"

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 4, as amended on the basis of the above-mentioned proposals. It was further decided that former paragraph 3 should be deleted and that the clause "subject to the basic concepts of its legal system" should be moved to the beginning of subparagraph 2 *(a)* (proposal submitted by Colombia). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

5. It should be noted that the representative of Pakistan requested that the report of the Ad Hoc Committee on its eleventh session should reflect that her country had joined the consensus on article 6, paragraph 1, of the protocol, but understood that the offences established in accordance with that paragraph implied the involvement of an organized criminal group. The representatives of Denmark and Norway indicated that their countries would make an interpretative statement at the time of signing the protocol regarding article 6, paragraph 4, in connection with a technical matter related to their penal systems. The representative of Japan requested that the report of the Ad Hoc Committee on its eleventh session should reflect his Government's view that, in the application of paragraph 3 of article 15 of the organized crime convention, States parties should not be obliged to establish their jurisdiction under that provision over the offences established in accordance with article 6 of the protocol.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 6
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

(a) The smuggling of migrants;

(b) When committed for the purpose of enabling the smuggling of migrants:

(i) Producing a fraudulent travel or identity document;

(ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph *(b)* of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 *(a)*, *(b)* (i) or *(c)* of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 *(b)* (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 *(a)*, *(b)* (i) and *(c)* of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 *(b)* and *(c)* of this article, circumstances:

(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

C. Interpretative notes

The interpretative notes on article 6 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 91-97) are as follows:

(a) The "other measures" mentioned here are additional to legislative measures and presuppose the existence of a law.

Paragraph 1

(b) The offences set forth in article 6 should be seen as being part of the activities of organized criminal groups. In this article, the protocol follows the precedent of the convention (art. 34, para. 2). The reference to "a financial or other material benefit" as an element of the offences set forth in paragraph 1 was included in order to emphasize that the intention was to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties. It was not the intention of the protocol to criminalize the activities of family members or support groups such as religious or non-governmental organizations.

(c) Subparagraph 1 *(b)* was adopted on the understanding that subparagraph (ii) would only apply when the possession in question was for the purpose of smuggling migrants as set forth in subparagraph *(a)*. Thus, a migrant who possessed a fraudulent document to enable his or her own smuggling would not be included.

(d) The words "any other illegal means" in subparagraph 1 *(c)* refer to illegal means as defined under domestic law.

Paragraph 2

(e) References to attempting to commit the offences established under domestic law in accordance with paragraph 2 *(a)* are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also culpable or punishable under domestic law.

Paragraph 3

(f) The words "inhuman or degrading treatment" in subparagraph *(b)* were intended, without prejudice to the scope and application of the trafficking in persons protocol, to include certain forms of exploitation.

Paragraph 4

(g) In paragraph 4, the word "measures" should be interpreted broadly to include both criminal and administrative sanctions.

Smuggling of migrants by sea

Article 7. Cooperation

A. Negotiation texts

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. In the previous versions of the draft protocol (A/AC.254/4/Add.1/Revs.1 and 2), this article was incorporated as paragraphs 1 and 2 in a more extensive article 7 (Measures against the smuggling of migrants by sea), which was broken into new articles 7 bis, 7 ter and 7 quater in the context of a new structure of chapter II of the draft protocol proposed by Austria and Italy. With the exception of the titles of the articles and amendments to make references to paragraphs or articles consistent with the new proposed structure, no changes were made to the text. In view of the above, a new article 7 was reflected in document A/AC.254/4/Add.1/Rev.3 as presented below.

Rolling text (A/AC.254/4/Add.1/Rev.3)

"II. Smuggling of migrants by sea

"Article 7
"Cooperation and mutual assistance

"1. States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in conformity with the international law of the sea and all generally accepted relevant international instruments.[1]

"2. A State Party that has reasonable grounds to suspect that a vessel, which is flying its flag or claiming its registry, which is without nationality or which, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the

[1]The language of this provision was derived from article 17, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the 1988 Convention) (United Nations, *Treaty Series*, vol. 1582, No. 27627) and from paragraph 8 of the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea (the interim measures), approved in December 1998 by the Maritime Safety Committee of the International Maritime Organization (MSC/Circ.896, annex, and also reproduced in document A/AC.254/CRP.3).

State Party concerned, is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance as is reasonable under the circumstances."[2]

Rolling text (A/AC.254/4/Add.1/Rev.4)

"II. Smuggling of migrants by sea

"Article 7
"Cooperation and mutual assistance

"1. States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in conformity with international law.[3]

"2. A State Party that has reasonable grounds to suspect that a vessel, which is flying its flag or claiming its registry, which is without nationality or which, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned, is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance within the means available to them."[4, 5]

Notes by the Secretariat

2. At the eighth session of the Ad Hoc Committee, time did not permit discussion of chapter II of the draft protocol. It was noted that, unlike other elements of the draft protocols to the convention, article 7, as well as the other articles of the chapter, required the participation of delegates with specific expertise in maritime law. In order to facilitate their attendance, it was decided that these articles would be reviewed at the beginning of the subsequent session of the Ad Hoc Committee, at which the revised draft migrants protocol was scheduled for consideration.

3. The version of article 7 contained in document A/AC.254/4/Add.1/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.5).

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[2]The language of this provision has been derived from article 17, paragraph 2, of the 1988 Convention and from paragraph 11 of the interim measures (see footnote 1).

[3]At the sixth session of the Ad Hoc Committee, a specific reference to the United Nations Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1833, No. 31363) and other international instruments was deleted at this point. There was general agreement that the reference should include both customary and conventional international law and not just specific instruments to which not all States were parties. Some delegations expressed concern about this and wanted the words "and in particular the United Nations Convention on the Law of the Sea" added after the reference to international law.

[4]During the sixth session of the Ad Hoc Committee, it was decided to replace the words "as is reasonable under the circumstances" with the words "within the means available to them", to bring the language closer to article 17, paragraph 2, of the 1988 Convention.

[5]At the sixth session of the Ad Hoc Committee, some delegations proposed moving this provision from article 7 to article 7 bis. Discussion on this question was deferred pending final determination of the content of the articles (see also footnote 34 concerning article 8 of the present protocol).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"II. Smuggling of migrants by sea

"Article 7
"Cooperation and mutual assistance

"States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.[6]"

Notes by the Secretariat

4. Paragraph 2 of article 7 was moved to become paragraph 1 of article 7 bis and the subsequent paragraphs of article 7 bis were renumbered accordingly.

5. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 7, as amended in its title. The last amendment is reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

6. It should be noted that the representative of Turkey requested that the report of the Ad Hoc Committee on its eleventh session should reflect his country's understanding that the references to the United Nations Convention on the Law of the Sea[7] in the interpretative notes concerning article 7 of the protocol neither prejudiced nor affected the position of Turkey concerning that Convention.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

II. Smuggling of migrants by sea

Article 7
Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

[6]As indicated above, at the sixth session of the Ad Hoc Committee it was decided to use a general reference to international law to include both customary and conventional international law as opposed to listing specific instruments. Not all States were parties to some instruments and a list might be interpreted as excluding any instruments not listed. The wording was changed to refer specifically to "the international law of the sea" at the recommendation of the informal consultations held during the ninth session (see also the pertinent proposal submitted by the United States, contained in document A/AC.254/L.195). The informal consultations held during the ninth session also recommended that the United Nations Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1833, No. 31363) should be mentioned specifically in the *travaux préparatoires*.

[7]United Nations, *Treaty Series*, vol. 1833, No. 31363.

C. Interpretative notes

The interpretative notes on chapter II and article 7 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 98 and 99) are as follows:

Chapter II. Smuggling of migrants by sea

(a) It is understood that the measures set forth in chapter II of the protocol cannot be taken in the territorial sea of another State except with the permission or authorization of the coastal State concerned. This principle is well established in the law of the sea and did not need to be restated in the protocol. The international law of the sea includes the United Nations Convention on the Law of the Sea[7] as well as other relevant international instruments. References to the United Nations Convention on the Law of the Sea do not prejudice or affect in any way the position of any State in relation to that Convention.

Article 7: Cooperation

(b) This protocol is without prejudice to the existing rights, obligations or responsibilities of States parties under other international instruments, such as those referred to in this article. Rights, obligations and responsibilities under another instrument are determined by the terms of that instrument and whether the State concerned is a party to it, not by this protocol. Therefore, any State that becomes a party to this protocol but is not a party to another international instrument referred to in the protocol would not become subject to any right, obligation or responsibility under that other instrument.

Article 8. Measures against the smuggling of migrants by sea

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article G

"Each State Party that has reasonable grounds to believe that a vessel flying its flag—or flying no flag, or a vessel which, even if flying a foreign flag or refusing to fly its flag, has actually the same nationality as the vessel exercising the right under article F, paragraph 1 *(b)*—is involved in the trafficking of migrants, may request the assistance of other States Parties to combat such trafficking. The requested Parties shall offer any reasonable assistance necessary in order to achieve this goal.

"Article H

"Each State Party that has reasonable grounds to believe that a vessel flying the flag of or registered with another State Party, navigating freely in accordance with international law, is involved in the trafficking of migrants may notify the State whose flag it flies, request a verification of the registration and, after receiving confirmation, may request authorization to adopt the necessary measures to guarantee the control and containment of the flow of individuals bound for its territory, which may include verifying the vessel's right to fly its flag, stopping the vessel, boarding it and diverting it.

"Article I

"Activities related to verifying the vessel's right to fly that flag, stopping, boarding and diverting the vessel shall be performed in the following manner:

"*(a)* Verifying the vessel's right to fly its flag: the vessel may be requested to give information on its nationality and the nationality of its crew, its port of departure and its destination;

"*(b)* Stopping the vessel: the vessel may be ordered to stop or to change course and reduce speed appropriately, following the procedures mentioned in subparagraph *(a)* above, so that a team of inspectors may board the vessel to ascertain the truth of the information communicated and whether any migrants are on board;

"*(c)* On-board visit: when the vessel is stopped or has changed course as ordered and at the speed ordered, the aforementioned inspection team shall board the vessel to carry out the necessary verification of documents and inspections, in order to ascertain whether the vessel is involved in the trafficking of migrants;

"*(d)* Diversion: if the vessel refuses to permit an on-board visit or if the on-board inspection reveals that irregularities are being committed, the vessel shall be ordered to go back to the port of departure or to divert to the nearest port of a Contracting Party, designated according to article L below, and the State of which the migrants are nationals shall be informed of the outcome of the on-board visit. If the vessel fails to comply with such order, it shall be escorted to the prescribed destination.

"...

"Article K

"...

"2. Any State Party that has undertaken any action under the terms of articles G, H and I above shall promptly notify the flag State of its final outcome.

"3. Each State Party shall designate the competent authority—or competent authorities, where necessary—for receiving and responding to the requests referred to in articles G and H above. The designation shall be notified to the Secretary-General of the United Nations and to all the other Parties within one month of the designation."

"Article L

"Each State Party shall:

"*(a)* Designate as soon as possible the ports to which vessels caught in flagrante delicto of transporting migrants can be diverted;

"*(b)* Take control of the vessels referred to in subparagraph *(a)* above that are diverted to its ports in order to prevent the commission of further illegal activities;

"*(c)* Authorize the vessel or the aircraft that is acting under article I above to redeploy in the ports designated to this end for technical purposes;

"*(d)* Provide berthing facilities and water supplies for the port visits referred to in subparagraph *(c)* above."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"II. Smuggling of migrants by sea

"Article 7
"Measures against the smuggling of migrants by sea

"1. States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in conformity with the international law of the sea and all generally accepted relevant international instruments.[1]

[1]The language of this provision was derived from article 17, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the 1988 Convention) (United Nations, *Treaty Series*, vol. 1582, No. 27627) and from paragraph 8 of the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea (the interim measures), approved in December 1998 by the Maritime Safety Committee of the International Maritime Organization (MSC/Circ.896, annex, and also reproduced in document A/AC.254/CRP.3).

"2. A State Party that has reasonable grounds to suspect that a vessel which is flying its flag or claiming its registry, which is without nationality or which, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance as is reasonable under the circumstances.[2]

"3. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State Party is engaged in the smuggling of migrants may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel.[3] The flag State may authorize the requesting State, inter alia:

"*(a)* To board the vessel;

"*(b)* To inspect the vessel; and

"*(c)* If evidence is found that the vessel is engaged in the smuggling of migrants, to take appropriate action with respect to the vessel, persons and cargo on board, as authorized by the flag State.[4]

"4. A State Party that has taken any action in accordance with paragraph 3 of this article shall promptly inform the flag State concerned of the results of that action.[5]

"5. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made pursuant to paragraph 3 of this article.[6]

"6. A flag State may, consistent with paragraph 1 of this article, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility[7] and the extent of effective measures to be taken, including the use of force. A State Party shall take no additional actions without the express authorization of the flag State, except those necessary to relieve imminent danger or those which follow from relevant bilateral or multilateral agreements.[8]

"7. Each State Party shall designate an authority or, where necessary, authorities to receive reports of the smuggling of migrants and to respond to requests for assistance, confirmation of registry or the right of a vessel to fly its flag and authorization to take appropriate measures.[9]

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[2]The language of this provision was derived from article 17, paragraph 2, of the 1988 Convention and from paragraph 11 of the interim measures.

[3]The language of this provision was derived from article 17, paragraph 3, of the 1988 Convention.

[4]The language of this provision was derived from article 17, paragraph 4, of the 1988 Convention.

[5]The language of this provision was derived from article 17, paragraph 8, of the 1988 Convention and from paragraph 12 of the interim measures.

[6]The language of this provision was derived from article 17, paragraph 7, of the 1988 Convention and from paragraph 14 of the interim measures.

[7]The language of this provision was derived from article 17, paragraph 6, of the 1988 Convention.

[8]The language of this provision was derived from paragraph 13 of the interim measures. Some delegations expressed concern that the exceptions did not cover all the operational scenarios that might arise.

[9]The language of this provision was derived from article 17, paragraph 7, of the 1988 Convention and from paragraph 21 of the interim measures.

"8. When there are reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and it is concluded in accordance with the international law of the sea that the vessel is without nationality or has been assimilated to a vessel without nationality, States Parties shall conduct an inspection of the vessel, as necessary. If the results of the inspection indicate that the vessel is engaged in the smuggling of migrants, States Parties shall take appropriate measures in accordance with relevant domestic and international law.[10]

"9. When evidence exists that a vessel is engaged in the smuggling of migrants by sea, States Parties shall:

"*(a)* Ensure the safety and the humanitarian handling of the persons on board and ensure that any actions taken with regard to the vessel are environmentally sound; and

"*(b)* Take appropriate action in accordance with relevant domestic and international law.[11]

"10. If any measures are taken against a vessel suspected of being engaged in the smuggling of migrants by sea, the State Party concerned shall take into account the need not to endanger the safety of human life at sea and the security of the vessel and the cargo or to prejudice the commercial and/or legal interests of the flag State or any other interested State.[12]

"11. States Parties shall take, adopt or implement such measures in conformity with international law with due regard to:

"*(a)* The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel; and

"*(b)* The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.[13]

"12. Any action taken at sea pursuant to this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.[14]

"13. Measures taken, adopted or implemented pursuant to this Protocol shall be in conformity with the international law of the sea and all generally accepted relevant international instruments, such as the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto.[15]

"14. States Parties shall consider entering into bilateral or regional agreements to facilitate cooperation in applying appropriate, efficient and effective measures to prevent and suppress the smuggling of migrants by sea.[16] States Parties shall also encourage the conclusion of operational arrangements in relation to specific cases (ad hoc arrangements)."[17]

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[10]The language of this provision was derived from paragraph 16 of the interim measures.

[11]The language of this provision was derived from paragraph 17 of the interim measures.

[12]The language of this provision was derived from article 17, paragraph 5, of the 1988 Convention and from paragraph 7 of the interim measures.

[13]The language of this provision was derived from article 17, paragraph 11, of the 1988 Convention and from paragraph 6 of the interim measures.

[14]The language of this provision was derived from article 17, paragraph 10, of the 1988 Convention and from paragraph 20 of the interim measures.

[15]The language of this provision was derived from paragraph 5 of the interim measures.

[16]The language of this provision was derived from article 17, paragraph 9, of the 1988 Convention and from paragraph 9 of the interim measures.

[17]The language of this provision was derived from paragraph 10 of the interim measures.

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. The version of this article contained in A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.2). The long version of article 7 included in those drafts was broken into new articles 7 bis, 7 ter and 7 quater in the context of a new structure of chapter II of the draft protocol, proposed by Austria and Italy. With the exception of the titles of the articles and amendments to make references to paragraphs or articles consistent with the new proposed structure, no changes were made to the text. In view of the above, part of former article 7 became article 7 bis and was reflected in A/AC.254/4/Add.1/Rev.3 as presented below.

Rolling text (A/AC.254/4/Add.1/Rev.3)

"Article 7 bis
"Measures against the smuggling of migrants by sea

"1. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State Party is engaged in the smuggling of migrants may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

"*(a)* To board the vessel;

"*(b)* To inspect the vessel; and

"*(c)* If evidence is found that the vessel is engaged in the smuggling of migrants, to take appropriate action with respect to the vessel, persons and cargo on board, as authorized by the flag State.

"2. A State Party that has taken any action in accordance with paragraph 1 of this article shall promptly inform the flag State concerned of the results of that action.

"3. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made pursuant to paragraph 1 of this article.

"4. A flag State may, consistent with paragraph 1 of article 7, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken, including the use of force. A State Party shall take no additional actions without the express authorization of the flag State, except those necessary to relieve imminent danger or those which follow from relevant bilateral or multilateral agreements.

"5. Each State Party shall designate an authority or, where necessary, authorities to receive reports of the smuggling of migrants and to respond to requests for assistance, confirmation of registry or the right of a vessel to fly its flag and authorization to take appropriate measures.

"6. When there are reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and it is concluded in accordance with the international law of the sea that the vessel is without nationality or has been assimilated to a vessel without nationality, States Parties shall conduct an inspection of the vessel, as necessary. If the results of the inspection indicate that the vessel is engaged in the smuggling of migrants, States Parties shall take appropriate measures in accordance with relevant domestic and international law."

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 7 bis
"Measures against the smuggling of migrants by sea

"1. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State Party is engaged in the smuggling of migrants may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

"*(a)* To board the vessel;[18]

"*(b)* To inspect the vessel; and

"*(c)* If evidence is found that the vessel is engaged in the smuggling of migrants, to take appropriate action with respect to the vessel, persons and cargo[19] on board, as [expressly][20] authorized by the flag State [in accordance with article 7 ter of this Protocol];[21]

"2. A State Party that has taken any action in accordance with paragraph 1 of this article shall promptly inform the flag State concerned of the results of that action.

"3. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made pursuant to paragraph 1 of this article.

"4. A flag State may, consistent with article 7, paragraph 1, of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken [, including the use of force].[22] A State Party shall take no additional actions

[18]At the sixth session of the Ad Hoc Committee, several delegations expressed concern about the exact meaning of the word "board" and its translation into other languages. At issue was the extent to which use of the term would authorize the boarding of a vessel against the will of the person in charge of it. The word "board" appears in both the 1988 Convention and the interim measures.

[19]At the sixth session of the Ad Hoc Committee, several delegations expressed concern about the reference to "persons and cargo" in this context.

[20]At the sixth session of the Ad Hoc Committee, several delegations proposed that the word "explicitly" or the word "expressly" should be added at this point for greater clarity. Other delegations expressed reservations about the possible effect on domestic law.

[21]This was compromise text proposed by the Chairperson at the sixth session of the Ad Hoc Committee in response to the proposal of a number of delegations that a cross reference to the safeguard provisions of article 7 ter, paragraph 3 *(a)*, should be added to this article.

[22]At the sixth session of the Ad Hoc Committee, a number of delegations expressed concern that the reference to "the use of force" in this provision might serve as an authorization or encouragement to use force. Those delegations wanted the reference deleted. Other delegations expressed the view that the actual effect was to limit the use of force, by ensuring that this could only occur where authorized by the State whose flag the ship was entitled to fly or in which it was registered and wanted the phrase retained. Several possible alternative texts were considered, but none found sufficient consensus.

without the express authorization of the flag State, except those necessary to relieve imminent danger [to the lives or safety of persons][23] or those which follow from relevant bilateral or multilateral agreements.

"5. States Parties shall designate an authority or, where necessary, authorities:[24]

"*(a)* To receive information on the smuggling of migrants mentioned in paragraph 3 of this article;[25] and

"*(b)* To receive and respond as quickly as possible[26] to requests for assistance, confirmation of registry or of the right of a vessel to fly their flags and authorization to take appropriate measures.[27]

"6. When there are reasonable grounds[28] to suspect that a vessel is engaged in the smuggling of migrants by sea and it is concluded in accordance with the international law of the sea that the vessel is without nationality or has been assimilated to a vessel without nationality, States Parties shall board and inspect[29] the vessel, as necessary. If evidence of involvement in the smuggling of migrants is found during such inspection,[30] States Parties shall take appropriate measures in accordance with relevant domestic and international law."[31]

Notes by the Secretariat

2. At the sixth session of the Ad Hoc Committee, Argentina suggested that a new section should be inserted after article 7 bis dealing with trafficking in migrants by land, proposing relevant text based on the revised draft of the protocol contained in document A/AC.254/4/Add.1/Rev.2 (see A/AC.254/L.99).

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[23]At the sixth session of the Ad Hoc Committee, many delegations expressed the view that the words "imminent danger" were too broad and required clarification. Some delegations sought clarification that the danger referred to was "to life" (see, for example, the proposal of Germany contained in document A/AC.254/L.97). Others expressed a preference for limiting this provision to cases where there was danger to the lives of migrants. Others pointed out that cases could arise where the lives of crew members or boarding parties exercising their powers under paragraph 1 *(a)* might be endangered and that the wording should provide for this.

[24]This text was revised at the sixth session of the Ad Hoc Committee to address the concerns of some delegations that two separate authorities might be needed. Spain proposed that the words "an authority, or where necessary, authorities" should be replaced with the words "a central authority, or where necessary, central authorities". This question was to be addressed at a later date, in conjunction with discussions on the articles of the draft convention that dealt with central authorities and similar matters.

[25]At the sixth session of the Ad Hoc Committee, some delegations expressed the view that this provision should be moved to article 10 (concerning information matters). Its current placement was agreed pending future discussions.

[26]At the sixth session of the Ad Hoc Committee, the words "as quickly as possible" were added at the request of several delegations.

[27]At the sixth session of the Ad Hoc Committee, it was noted that the substance of this provision overlapped with that of article 14, paragraph 8 (on appointment of central authorities for mutual legal assistance), of the draft convention and should therefore be re-examined once that provision had been finalized.

[28]At the sixth session of the Ad Hoc Committee, concerns were expressed about the standard set by the language of the Spanish text. It was agreed that this would be made to match the English language standard of "reasonable grounds". Similar changes would be made in the glossary being prepared by the Secretariat, if necessary.

[29]At the sixth session of the Ad Hoc Committee, to respond to concerns about the meaning of "to board" in various languages, the wording was changed to read "to board and inspect".

[30]At the sixth session of the Ad Hoc Committee, the reference to "evidence of involvement in smuggling" was added for greater consistency with terminology elsewhere in the draft protocol.

[31]At the sixth session of the Ad Hoc Committee, it was noted that the substance of this provision overlapped with that of article 14, paragraph 8 (on appointment of central authorities for mutual legal assistance), of the draft convention and should therefore be re-examined once that provision had been finalized.

Ninth session: 5-16 June 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 7 bis of the revised draft protocol contained in document A/AC.254/4/Add.1/Rev.5, which was the same as that contained in document A/AC.254/4/Add.1/Rev.4.

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 7 bis
"Measures against the smuggling of migrants by sea

"1. A State Party that has reasonable grounds to suspect that a vessel, which is flying its flag or claiming its registry, which is without nationality or which, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned, is engaged[32] in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance within the means available to them.[33, 34, 35]

"2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State Party is engaged[36] in the smuggling of migrants may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel.[37] The flag State may authorize the requesting State, inter alia:

"*(a)* To board the vessel;

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[32]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was proposed (see the proposal of the United States contained in document A/AC.254/L.195) that the word "engaged" should be replaced with the word "involved", which some delegations felt would include vessels less directly involved in smuggling. The words "taking part in" and "participating in" were also considered, but there was no consensus to change the text. The Chairman asked the delegations concerned to propose suitable terminology for the subsequent session at which the draft protocol would be discussed. Consideration would then be given to adopting consistent language where that terminology appeared. In the English language text, references to vessels "engaged in smuggling" occurred in article 7 bis, paragraphs 1, 2, 2 *(c)* and 7. References to criminal groups "engaged in smuggling" also occurred in article 10, paragraphs 1 and 3 *(a)* and *(b)*.

[33]The language of this provision was derived from article 17, paragraph 2, of the 1988 Convention and from paragraph 11 of the interim measures. During the sixth session of the Ad Hoc Committee, it was decided to replace the words "as is reasonable under the circumstances" with the words "within the means available to them", to bring the language closer to article 17, paragraph 2, of the 1988 Convention.

[34]At the sixth session of the Ad Hoc Committee, some delegations proposed moving this provision from article 7 to article 7 bis and the informal consultations held during the ninth session recommended that this should be done.

[35]At the informal consultations held during the ninth session of the Ad Hoc Committee, two delegations were concerned that problems might arise when the assistance of third-party States was requested by a State in the belief that it was the flag State and had the right to authorize them to take action. If the belief was mistaken, the assisting States could be in breach of international law.

[36]At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations proposed replacing the word "engaged" with the word "involved" (see also footnotes 32, 39 and 50).

[37]The delegation of Denmark raised a reservation to this provision, indicating that, as a matter of Danish constitutional law, it could not expressly authorize another State to search a ship of Danish nationality or registry. It indicated that it could, however, undertake not to pursue any claims under Danish or international law against another State that took such action of its own accord, provided that such action was consistent with the protocol.

"*(b)* To search[38] the vessel; and

"*(c)* If evidence is found that the vessel is engaged[39] in the smuggling of migrants, to take appropriate measures with respect to the vessel, persons and cargo on board, as [expressly] authorized by the flag State [in accordance with article 7 ter of this Protocol].[40]

"3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

"4. A State Party shall respond expeditiously[41] to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made pursuant to paragraph 2 of this article.

"5. A flag State may, consistent with article 7[42] of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken.[43] A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons[44] or those which follow from relevant bilateral or multilateral agreements.[45]

"6. States Parties shall designate an authority or, where necessary, authorities[46] to receive and respond[47] to requests for assistance, confirmation of registry or of the

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[38]At the informal consultations held during the ninth session of the Ad Hoc Committee, there was discussion about whether the word "inspect" or the word "search" was more appropriate here. Some delegations preferred an inspection power, as being broader and less intrusive, whereas others (see, for example, the proposal of the United States contained in document A/AC.254/L.195) preferred the term "search" as being more suitable for the examination of a vessel believed to be engaged in criminal smuggling activities. One proposal was the use of the words "search or inspect" or the equivalent in all languages. Several delegations proposed the use of language matching article 17, paragraph 4, of the 1988 Convention; however, it was noted that while the English text of that instrument used the term "search", the French and Spanish texts used words more closely corresponding to "inspection". The Secretariat was requested to consult the United Nations translators and editors regarding recommended terminology that would be consistent in all languages. Some delegations, including the delegation of the Islamic Republic of Iran, requested that their preference for the word "inspection" in English should be noted.

[39]At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations proposed replacing the word "engaged" with the word "involved" (see also footnotes 32, 36 and 50).

[40]This was compromise text proposed by the Chairperson at the sixth session of the Ad Hoc Committee in response to the proposal of a number of delegations that a cross reference to the safeguard provisions of article 7 ter, paragraph 3 *(b)*, should be added to this article.

[41]At the informal consultations held during the ninth session of the Ad Hoc Committee, one delegation suggested replacing the word "expeditiously" with the words "as soon as possible" or "as quickly as possible". It was noted that the same issue arose in paragraph 6 of this article, where there was a proposal to replace the words "as quickly as possible" with the word "expeditiously". However, at the end of the discussion on paragraph 6, deletion of the words "as quickly as possible" in that paragraph was recommended (see footnote 47 below).

[42]The informal consultations held during the ninth session of the Ad Hoc Committee recommended replacing the former reference to paragraph 1 of article 7 with a reference to article 7 only, as a consequence of its recommendation to move former paragraph 2 of article 7 to article 7 bis.

[43]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was agreed to recommend deleting the words "the use of force".

[44]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was agreed to recommend removing the square brackets from the words "to the lives or safety of persons" and to delete the words "or safety" from that phrase.

[45]The language of this provision is derived from article 17, paragraph 6, of the 1988 Convention and paragraph 13 of the interim measures.

[46]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was noted that the corresponding reference in article 14, paragraph 13, of the draft convention had also not been finalized on this question. There was discussion about whether the two instruments should be made consistent on this point, once language for the convention had been agreed. One delegation noted that there might be a need for different language in the protocol because the authorities that dealt with maritime matters might not be the same as those dealing with general requests for mutual legal assistance under article 14 of the convention. Whatever the outcome of the negotiations in relation to the convention, most delegations opposed making reference to "central" authorities in the protocol.

[47]The informal consultations held during the ninth session of the Ad Hoc Committee recommended deletion of the words "as quickly as possible". The concerns of one delegation about the use of the term "expeditiously" in paragraph 4 of this article were also noted with respect to this change (see also footnote 41 above).

right of a vessel to fly their flags and authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.[48]

"7. A State Party that has reasonable grounds[49] to suspect that a vessel is engaged[50] in the smuggling of migrants by sea and is without nationality[51] or may be assimilated to a vessel without nationality, may board and search the vessel.[52] If evidence confirming the suspicion is found, that State Party[53] shall take appropriate measures[54] in accordance with relevant domestic and international law.[55]"

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 7 bis, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

5. It should be noted that the representative of Denmark requested that the report of the Ad Hoc Committee on its eleventh session should reflect the position of his country in relation to article 8, paragraph 2, of the protocol. According to Danish constitutional law, a State party wishing to take appropriate measures in accordance with that paragraph with regard to vessels of Danish nationality or registry would have to request authorization from Denmark and could not act of its own accord. Denmark indicated that it would examine such requests on a case-by-case basis. The representative of Canada indicated that his country, according to current practice, did not authorize other States to board vessels of Canadian nationality or registry. However, upon request under the protocol, Canada undertook not to object to such action, provided that the action taken was consistent with the protocol. The representative of Spain requested that the report of the Ad Hoc Committee

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[48]Pursuant to a proposal of the United States (see A/AC.254/L.195), the informal consultations held during the ninth session of the Ad Hoc Committee recommended the addition of the following words: "Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation."

[49]The informal consultations held during the ninth session of the Ad Hoc Committee recommended replacing the words "When there are reasonable grounds" at the beginning of this provision with the words "A State Party that has reasonable grounds". One delegation expressed concern that this might make the assessment of "reasonable grounds" a subjective matter for the State involved. Other delegations pointed out that, since the provision dealt only with the boarding of a stateless vessel, only one State would be in a position to make this determination in any event.

[50]At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations proposed replacing the word "engaged" with the word "involved" (see also footnotes 32, 36 and 39).

[51]The informal consultations held during the ninth session of the Ad Hoc Committee recommended deleting wording that would have determined the nationality of the vessel "in accordance with the law of the sea" as unnecessary (see A/AC.254/4/Add.1/Rev.5, article 7 bis, paragraph 6). One delegation opposed the deletion on the basis that the additional words "in accordance with the law of the sea" provided greater certainty.

[52]The informal consultations held during the ninth session of the Ad Hoc Committee recommended revising this sentence by replacing the words "shall board" with the words "may board" and consequently deleting the words "as necessary", and by replacing the word "inspect" with the word "search", subject to the concerns about language concordance noted with respect to paragraph 2 *(b)* of this article. The Islamic Republic of Iran requested that its preference for the term "inspect" should be noted at this point.

[53]This proposal was made by Australia at the informal consultations held during the ninth session of the Ad Hoc Committee.

[54]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was noted that the words "measures" and "action" appeared interchangeably in this context throughout the protocol. It was recommended that the term "measures" should be used throughout and the Secretariat was requested to make the substitution, subject to subsequent approval by the Ad Hoc Committee. Other such substitutions were made in article 7 bis, paragraphs 2 *(c)*, 3 and 5, and in article 7 ter, paragraphs 4 and 5.

[55]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was recommended to amend this provision based on the proposal submitted by the United States (A/AC.254/L.195). The original language of this provision was derived, as already noted, from paragraph 16 of the IMO interim measures.

on its eleventh session should reflect his country's understanding concerning article 8, paragraph 6, namely, that the authorities mentioned therein were central authorities.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 8
Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

(a) To board the vessel;

(b) To search the vessel; and

(c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

C. Interpretative note

The interpretative note on article 8 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 100) is as follows:

The word "engaged" in paragraphs 1, 2 and 7 of this article and in paragraph 1 of article 10 should be understood broadly as including vessels "engaged" both directly and indirectly in the smuggling of migrants. Of particular concern was the inclusion of both vessels actually found to be carrying smuggled migrants and vessels ("mother ships") that transport smuggled migrants on open ocean voyages but are sometimes not apprehended until after the migrants have been transferred to smaller local vessels for landing purposes.

Notes by the Secretariat

6. The interpretative note on chapter II (Smuggling of migrants by sea) of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 98), also applies to article 8 (see the interpretative notes concerning article 7 of the present protocol).

Article 9. Safeguard clauses

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article F

"1. Nothing in chapter II of this Protocol shall affect in any way the rules of international law concerning the exercise of:

"*(a)* State powers related to investigations or to the accomplishment of administrative functions on board vessels not flying their flag;

"*(b)* The right of any State to adopt, in international waters, the measures under articles H and I below, with respect to a vessel having no nationality or flying the flags of more than one country and using them at its convenience, when reasonable grounds exist to believe that it is involved in the trafficking of migrants, provided that one of the following links with that State exists:

"(i) Based on its route, the vessel is undoubtedly bound for its coasts;

"(ii) The vessel is armed or governed or manned by nationals.

"2. If a measure is taken in implementation of this article, the States Parties concerned shall take into due account the need not to impair the security of human life at sea and the safety of the vessel and its cargo, as well as the commercial and legal interests of any other State concerned and those of the State of which the migrants and crew are nationals.

"...

"Article J

"All measures taken in order to comply with the provisions under articles G, H and I above shall be implemented only by warships or military naval craft.

"Article K

"1. No activity undertaken within the scope of articles G, H and I above may in any way jeopardize the safety of the vessel or the commercial interests of the State whose flag it flies or of any other State, or interfere with the exercise of the rights of jurisdiction of any other coastal State.

"..."

Sixth session: 6-17 December 1999

Notes by the Secretariat

1. In the previous versions of the draft protocol (A/AC.254/4/Add.1/Rev.1 and 2), this article was incorporated as paragraphs 9 to 13 in a more extensive article 7 (Measures against the smuggling of migrants by sea), which was broken into new articles 7 bis, 7 ter and 7 quater in the context of a new structure of chapter II of the draft protocol proposed by Austria and Italy. With the exception of the titles of the articles and amendments to make references to paragraphs or articles consistent with the new proposed structure, no changes were made to the text. In view of the above, a new article 7 ter was reflected in document A/AC.254/4/Add.1/Rev.3 as presented below.

Rolling text (A/AC.254/4/Add.1/Rev.3)

"Article 7 ter
"Safeguard clauses

"1. When evidence exists that a vessel is engaged in the smuggling of migrants by sea, States Parties shall:

"*(a)* Ensure the safety and the humanitarian handling of the persons on board and ensure that any actions taken with regard to the vessel are environmentally sound; and

"*(b)* Take appropriate action in accordance with relevant domestic and international law.[1]

"2. If any measures are taken against a vessel suspected of being engaged in the smuggling of migrants by sea, the State Party concerned shall take into account the need not to endanger the safety of human life at sea and the security of the vessel and the cargo or to prejudice the commercial and/or legal interests of the flag State or any other interested State.[2]

"3. States Parties shall take, adopt or implement such measures in conformity with international law with due regard to:

"*(a)* The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel; and

"*(b)* The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.[3]

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[1]The language of this provision was derived from paragraph 17 of the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea (the interim measures), approved in December 1998 by the Maritime Safety Committee of the International Maritime Organization (MSC/Circ.896, annex, and also reproduced in document A/AC.254/CRP.3).

[2]The language of this provision was derived from article 17, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (The 1988 Convention) (United Nations, *Treaty Series*, vol. 1582, No. 27627) and from paragraph 7 of the interim measures.

[3]The language of this provision was derived from article 17, paragraph 11, of the 1988 Convention and from paragraph 6 of the interim measures.

"4. Any action taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.[4]

"5. Measures taken, adopted or implemented pursuant to this Protocol shall be in conformity with the international law of the sea and all generally accepted relevant international instruments, such as the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto."[5]

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 7 ter
"Safeguard clauses

"1. When there is evidence that a vessel is engaged in the smuggling of migrants and a State Party takes action in accordance with this Protocol[6] and relevant domestic and international law, that State Party shall ensure the safety and the humane treatment of the persons on board and shall ensure that any action taken with regard to the vessel is environmentally sound.[7]

"2. If any measures are taken against a vessel suspected of being engaged in the smuggling of migrants by sea, the State Party concerned shall take due account of the need not to endanger the safety of human life at sea, the security of the vessel or its cargo, or to prejudice the commercial and/or legal interests of the flag State or any other interested State[8] [ensure that the safety of human life at sea is not endangered and that the security of the vessel and its cargo and the commercial or legal interests of the flag State or any other interested State or party are not prejudiced].[9]

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[4]The language of this provision was derived from article 17, paragraph 10, of the 1988 Convention and from paragraph 20 of the interim measures.

[5]The language of this provision was derived from paragraph 5 of the interim measures.

[6]At the sixth session of the Ad Hoc Committee, there was discussion of whether the safeguard provisions of article 7 ter should be made applicable to actions taken with respect to any provision of the entire protocol. The preference of delegations was for application throughout the protocol and this was adopted for the purpose of future discussion, bearing in mind that an ultimate decision would depend on the drafting of the final provisions and might have to be reconsidered at that point.

[7]As indicated above, the language of this provision was originally derived from paragraph 17 of the interim measures. At the sixth session of the Ad Hoc Committee, a group of delegations redrafted the provision to respond to concerns about terminology and the relationship between former subparagraphs *(a)* and *(b)*. The group also expressed the view that the new text should become article 7 ter, paragraph 2, with the existing paragraph 2 of article 7 ter becoming paragraph 1. The plenary agreed to adopt the above text, with its placement to be determined later.

[8]As indicated above, the language of this provision was originally derived from article 17, paragraph 5, of the 1988 Convention and from paragraph 7 of the interim measures. During the sixth session of the Ad Hoc Committee, several delegations requested that the wording should be changed to "take due account" for greater consistency with article 17, paragraph 5. The replacement of the word "and" with the word "or" and repunctuation of the list were done for the same reason and to ensure that all of the phrases were included in the list.

[9]This new text addressed concerns expressed by China and some other delegations at the sixth session of the Ad Hoc Committee. The text expressed the need to protect life at sea as a positive obligation and incorporated a reference to the interests of third parties that were not States, as proposed. The redrafting was made necessary by the positive construction of the wording dealing with life at sea.

"2 bis. Where measures taken pursuant to this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.[10]

"3. States Parties shall take, adopt or implement such measures in conformity with international law with due regard to:

"*(a)* The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel; and

"*(b)* The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.[11]

"4. Any action taken at sea pursuant to articles 7 to 7 quater of this Protocol shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

"5. Measures taken, adopted or implemented pursuant to this Protocol shall be in conformity with international law."[12]

Notes by the Secretariat

2. The version of article 7 ter contained in document A/AC.254/4/Add.1/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.5), with the exception of an editorial amendment in paragraph 1, where the words "shall make sure" replaced the words "shall ensure" and the renumbering of paragraph 2 bis, which became paragraph 3. The subsequent paragraphs were renumbered accordingly.

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[10]This proposal was made by China at the sixth session of the Ad Hoc Committee (see A/AC.254/5/Add.15). The text was taken from article 110, paragraph 3, of the United Nations Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1833, No. 31363). It should be noted that references to "ship" in that text are replaced with "vessel" for consistency with the other provisions of the draft protocol. References to unfounded "suspicions" in that text were changed because there was no prior reference to suspicion in this article. A similar proposal to that of China was submitted by Belgium (see A/AC.254/5/Add.21).

[11]At the sixth session of the Ad Hoc Committee, Singapore proposed replacing the text of article 7 ter, paragraph 3, with the following text, based on article 17, paragraph 11, of the 1988 Convention:

"3. Any action taken in accordance with this article shall take due account of the need not to interfere with or to affect:

"*(a)* The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; and

"*(b)* The authority of the flag State to exercise jurisdiction and control in administration, technical and social matters involving the vessel."

At the eighth session of the Ad Hoc Committee, Singapore submitted a proposal (see A/AC.254/L.153) to insert the following text as a new paragraph 4 bis in article 7 ter: "No action taken pursuant to articles 7 to 7 quater of this Protocol shall be taken in the territorial sea, except with the permission of the coastal State."

[12]As indicated above, the language of this provision was originally derived from paragraph 5 of the interim measures. At the sixth session of the Ad Hoc Committee, the expanded reference to specific international legal instruments was deleted for the same reasons as given with respect to article 7, paragraph 1 (see footnote 3 concerning article 7 of the present protocol). Several delegations indicated a preference for the greater certainty of listing the major relevant international legal instruments, in particular the United Nations Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1833, No. 31363).

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 7 ter
"Safeguard clauses

"1. Where a State Party takes measures against a vessel in accordance with article 7 bis of this Protocol, that State Party shall:[13]

"*(a)* Ensure the safety[14] and humane treatment of the persons on board;

"*(b)* Take due account of the need not to endanger the security of the vessel or its cargo;

"*(c)* Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

"*(d)* Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

[*Paragraph 2 was deleted.*][15]

"2. Where measures taken pursuant to this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.[16]

"3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:[17]

"*(a)* The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; and

"*(b)* The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.[18]

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[13]At the informal consultations held during the ninth session of the Ad Hoc Committee, there was lengthy discussion of former paragraphs 1 and 2 of this article as contained in document A/AC.254/4/Add.1/Rev.5. The consultations recommended replacement of those paragraphs with this text, based on the proposal of Australia. One delegation sought several further changes to the text to make the requirements of subparagraphs *(b)* and *(c)* more mandatory and to safeguard the commercial or legal interests of third parties that were not States. It proposed that the words "and relevant domestic and international law" should be added after the word "Protocol"; that subparagraph *(b)* should be replaced with the words "ensure that the security of the vessel or its cargo is not endangered"; that the words "take due account" in subparagraph *(c)* should be replaced with the word "ensure" and the words "or third party" added at the end of that subparagraph.

[14]At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations suggested inserting the phrase "of life at sea" after the word "safety".

[15]The informal consultations held during the ninth session of the Ad Hoc Committee recommended merging former paragraph 2 of this article with paragraph 1.

[16]At the informal consultations held during the ninth session of the Ad Hoc Committee, some concerns were expressed with respect to who might be able to claim compensation under this provision, from whom and in what forum. Concerns were also raised about the payment of compensation to "the vessel", as opposed to its owner or another party. It was decided to maintain consistency with the wording of the United Nations Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1833, No. 31363) and no changes were recommended.

[17]At the informal consultations held during the ninth session of the Ad Hoc Committee, two delegations suggested replacing the words "shall take due account of the need not to interfere with" with the words "shall not interfere with".

[18]This text was proposed by the United States at the informal consultations held during the ninth session of the Ad Hoc Committee (see A/AC.254/L.195), based on a proposal by Singapore submitted to the sixth session of the Ad Hoc Committee (see footnote 11 above) and article 17, paragraph 11, of the 1988 Convention.

"4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.[19]

"5. No measures taken pursuant to this chapter shall be taken in the territorial sea, except with the permission of or as otherwise authorized by the coastal States."[20, 21]

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 7 ter, as amended. Former paragraph 5 contained in document A/AC.254/4/Add.1/Rev.6 was deleted, provided that an interpretative note was included in the *travaux préparatoires* (see note 4 by the Secretariat below). The last amendment is reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 9
Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(a) Ensure the safety and humane treatment of the persons on board;

(b) Take due account of the need not to endanger the security of the vessel or its cargo;

(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

[19]As indicated above, the language of this provision was derived from article 17, paragraph 10, of the 1988 Convention and from paragraph 20 of the interim measures. The words "this chapter" were proposed by the United States at the informal consultations held during the ninth session of the Ad Hoc Committee (see A/AC.254/L.195).

[20]The informal consultations held during the ninth session of the Ad Hoc Committee recommended the deletion of former paragraph 6 contained in document A/AC.254/4/Add.1/Rev.5 (former paragraph 5 in document A/AC.254/4/Add.1/Rev.4).

[21]This was a proposal by the United States at the informal consultations held during the ninth session of the Ad Hoc Committee (see A/AC.254/L.195). The Islamic Republic of Iran suggested deletion of the words "or as otherwise authorized by" and other delegations suggested ending the paragraph at the word "sea". Another delegation suggested deleting this paragraph. The word "action" was replaced with the words "measures" as requested for consistency with the revision of article 7 bis, paragraph 7. Mexico agreed with the principle expressed in this paragraph, but voiced concerns about redundancy with the international law of the sea. It suggested that an interpretative note should be prepared and incorporated into the *travaux préparatoires*.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

C. Interpretative note

Notes by the Secretariat

4. The interpretative note on chapter II (Smuggling of migrants by sea) of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (A/55/383/Add.1, para. 98), also applies to article 9 (see the interpretative notes concerning article 7 of the protocol).

Prevention, cooperation and other measures

Article 10. Information

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article O

"When there are reasonable grounds to believe that a crime is being committed, as defined in this Protocol, the States Parties that might be concerned for any reason shall cooperate and exchange any useful information, in accordance to their national legislation, and shall coordinate any other administrative measures among themselves.

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 10
"Information

"1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to the migrants involved.

"2. Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from becoming victims of criminal organizations.

"3. Without prejudice to articles 19 and 20 of the Convention, States Parties shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, in conformity with their respective national laws and applicable treaties or arrangements, relevant information on matters such as:

"*(a)* Embarkation and destination points, as well as routes, carriers and means of transportation, known or suspected to be used by criminal organizations engaged in the smuggling of migrants;

"*(b)* The identity and methods of organizations or criminal associations known or suspected to be engaged in the smuggling of migrants;

"*(c)* The authenticity and proper form of travel documents issued by a State Party and advice concerning the theft or related misuse of blank travel or identity documents;

"*(d)* Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction, acquisition or other misuse of travel or identity documents used in the smuggling of migrants and ways of detecting them;

"*(e)* Legislative experiences, practices and measures to prevent, combat and eradicate the smuggling of migrants; and

"*(f)* Relevant scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the smuggling of migrants and to prosecute those involved."

Notes by the Secretariat

1. The version of article 10 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2-4), with the exception of one editorial amendment in paragraph 1 of the text contained in document A/AC.254/4/Add.1/Rev.4, where the words "States Parties" replaced the words "each State Party". (See note 1 by the Secretariat concerning the preamble of the protocol.)

2. See footnote 1 under article 17 of the Protocol.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 10
"Information

"1. States Parties shall take measures to ensure that they provide or strengthen information programmes to increase public awareness of the fact that the smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to the migrants involved.

"2. Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from becoming victims of criminal organizations.

"3. Without prejudice to articles 19 and 20 of the Convention, States Parties shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, in conformity with their respective national laws and applicable treaties or arrangements, relevant information on matters such as:

"*(a)* Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by criminal organizations engaged in the smuggling of migrants;

"*(b)* The identity and methods of organizations or criminal associations known to be or suspected of being engaged in the smuggling of migrants;

"*(c)* The authenticity and proper form of travel documents issued by a State Party and advice concerning the theft or related misuse of blank travel or identity documents;

"*(d)* Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction, acquisition or other misuse of travel or identity documents used in the smuggling of migrants and ways of detecting them;

"*(e)* Legislative experiences, practices and measures to prevent, combat and eradicate the smuggling of migrants; and

"*(f)* Relevant scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the smuggling of migrants and to prosecute those involved."

Notes by the Secretariat

3. At the eleventh session of the Ad Hoc Committee, delegations based their comments on the text of article 10 of the revised draft protocol contained in document A/AC.254/4/Add.1/Rev.6, which was the same as that contained in document A/AC.254/4/Add.1/Rev.5, except that in paragraph 3, the phrase "in conformity with their respective national laws and applicable treaties or arrangements" was replaced with the phrase "in conformity with their respective domestic law and applicable treaties, agreements or arrangements".

4. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 10, as amended. It was decided that paragraphs 1 and 2 should be moved to article 11 on prevention (see note 3 by the Secretariat concerning article 15 of the protocol). In former paragraph 3, which became paragraph 1, it was decided that the following phrase, based on a proposal submitted by Germany (see A/AC.254/5/Add.27), should be added: "In particular those with common borders or located on routes along which migrants are smuggled". In addition, there was agreement to replace in the same paragraph the phrase "in conformity with their respective domestic law and applicable treaties, agreements or arrangements" with the phrase "consistent with their respective domestic legal and administrative systems" (as proposed by the United States). Furthermore, a new paragraph on restrictions on the use of information was added on the basis of a proposal submitted by Viet Nam in order to make the article consistent with the corresponding article 10 of the trafficking in persons protocol. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

III. Prevention, cooperation and other measures

Article 10
Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;

(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

C. Interpretative notes

The interpretative notes on article 10 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 101 and 102) are as follows:

Paragraph 1

(a) The obligation to exchange relevant information under this paragraph was adopted on the understanding that this would be done in accordance with both the Protocol and any other applicable treaties, agreements or arrangements that might exist between the States involved.

(b) The word "engaged" in this paragraph and in paragraphs 1, 2 and 7 of article 8 should be understood broadly as including vessels "engaged" both directly and indirectly in the smuggling of migrants. Of particular concern was the inclusion of both vessels actually found to be carrying smuggled migrants and vessels ("mother ships") that transport smuggled migrants on open ocean voyages but are sometimes not apprehended until after the migrants have been transferred to smaller local vessels for landing purposes.

Article 11. Border measures

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 9
"Additional legislative and administrative measures

"States Parties shall take such additional legislative or other measures as they consider appropriate to prevent means of transportation operated by commercial carriers from being used in the commission of offences established under article 4 of this Protocol. Such measures shall include, in appropriate cases, fines and forfeiture to ensure that carriers, including any transportation company, or the owner or operator of any vessel or vehicle, screen all passengers to see that they have valid passports and visas, if required, or any other documentation necessary for legal entry into the receiving State.

Notes by the Secretariat

1. At the sixth session of the Ad Hoc Committee, Germany proposed to make the application of article 9 discretionary rather than mandatory (see A/AC.254/L.97). See also footnote 3 below.

2. See footnote 1 concerning article 17 of the present protocol.

3. At the eighth session of the Ad Hoc Committee, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration emphasized that the strengthening of border controls and other measures foreseen in the draft protocol to prevent the smuggling of migrants should be implemented in such a manner that they would not undermine the rights of individuals to seek asylum or put refugees and asylum seekers at risk of refoulement (see A/AC.254/27 and Corr.1, para. 21).

4. The version of article 9 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2-5).

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 9
"Other legislative and administrative measures against smuggling of migrants by land, air or sea[1, 2]

"1. States Parties shall take legislative or other appropriate measures to prevent means of transport operated by commercial carriers from being used in the commission of offences established under article 4 of this Protocol.[3]

"2. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

"3. States Parties shall take the necessary measures, in accordance with their domestic law, to provide for sanctions in cases of violation of the obligation set out in paragraph 2 of this article."[4]

Notes by the Secretariat

5. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 9, as amended, including the title. It was decided that paragraphs 1, 5 and 6 of the final text of the article should be added to ensure consistency with the corresponding article 11 of the trafficking in persons protocol. In particular, paragraph 6 of the final text was taken, as amended, from article 11 of the draft protocol on prevention (see note 3 by the Secretariat concerning article 15 of the present protocol). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

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[1]At the informal consultations held during the ninth session of the Ad Hoc Committee, it was recommended that the words "by land, air and sea" should be added to this title, as this would make it unnecessary to refer to them repeatedly in the text.

[2]The text of this article was based on the proposal of the European Community, on behalf of Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden (see A/AC.254/L.198). Similar proposals had been submitted during earlier sessions of the Ad Hoc Committee, by France at the sixth session (see A/AC.254/L.104) and the United States at the eighth session (see A/AC.254/5/Add.21). The proposal of the European Community was discussed extensively at the informal consultations held during the ninth session of the Ad Hoc Committee. During the informal consultations, it was recommended that former article 9 should be deleted and that the present text should be adopted in its place. There was also discussion of the proposal of Argentina entitled "Trafficking in migrants by land" (see A/AC.254/5/Add.24), some elements of which were incorporated into the revised text of article 9. Argentina reserved the right to raise other elements of its proposal during future discussions on this article.

[3]Two delegations expressed concern about the obligatory nature of this paragraph (see also article 11 of the trafficking in persons protocol in part two).

[4]At the informal consultations held during the ninth session of the Ad Hoc Committee, several concerns about the new article were addressed. It was noted that the text required States parties to impose an obligation on commercial carriers, which would require the carriers only to ascertain whether or not passengers had the necessary documents in their possession and not to make any judgement or assessment of the validity or authenticity of the documents. It was also noted that this text did not unduly limit the discretion of States parties not to hold carriers liable for transporting undocumented refugees. Several other provisions either permitted or required States parties not to curtail such transport. Article 15 bis, as formulated at the time, preserved general international law obligations and referred specifically to the 1951 Convention and 1967 Protocol relating to the Status of Refugees (United Nations, *Treaty Series*, vol. 189, No. 2545, and vol. 606, No. 8791). In most countries, domestic constitutional or legal provisions protecting migrants would also apply in such cases. With these explanations, the informal consultations recommended adoption of the new text.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 11
Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 *(a)*, of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

C. Interpretative note

The interpretative note on article 11 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 103) is as follows:

Paragraph 2

Measures and sanctions applied in accordance with this paragraph should take into account other international obligations of the State party concerned. It should also be noted that this paragraph requires States parties to impose an obligation on commercial carriers only to ascertain whether or not passengers have the necessary documents in their possession and not to make any judgement or assessment of the validity or authenticity of the documents. It should further be noted that this paragraph does not unduly limit the discretion of States parties not to hold carriers liable for transporting undocumented refugees and that article 19 preserves the general obligations of States parties under international law in this regard, making specific reference to the 1951 Convention[5] and 1967 Protocol[6] relating to the Status of Refugees. Article 11 was also adopted on the understanding that it would not be applied in such a way as to induce commercial carriers to impede unduly the movement of legitimate passengers.

[5]United Nations, *Treaty Series*, vol. 189, No. 2545.
[6]Ibid., vol. 606, No. 8791.

Article 12. Security and control of documents

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 12
"Control of documents

"1. States Parties shall adopt such measures as may be necessary to ensure that travel or identity documents issued by them are of such quality that they cannot readily be unlawfully altered, replicated, issued or otherwise misused.

"2. Each State Party shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and acceptance of travel or identity documents issued by or on behalf of the State Party."

Notes by the Secretariat

1. The version of article 12 of the protocol contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2 and 3).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 12
"Security and[1] *control of documents*

"States Parties shall adopt such measures as may be necessary, in accordance with available means:

[1]Proposal by France at the sixth session of the Ad Hoc Committee.

"*(a)* To ensure that travel or identity documents issued by them are of such quality that they cannot be easily misused and cannot readily be unlawfully altered, replicated, falsified[2] or issued;[3] and

"*(b)* To ensure the integrity and security of travel or identity documents issued by or on behalf of the States Parties and to prevent their unlawful creation, issuance and use.[4]"

Notes by the Secretariat

2. The revised text of the article formulated by the informal drafting group (see footnote 4 below) was discussed at the informal consultations held during the ninth session of the Ad Hoc Committee, which recommended that it should be adopted.

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 12, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

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[2]Proposal by Saudi Arabia at the sixth session of the Ad Hoc Committee.

[3]At the sixth session of the Ad Hoc Committee, a number of delegations expressed concern about the cost implications of this provision for developing countries and some delegations proposed making its application discretionary or conditional on available means. Other delegations expressed concern that the reference to "misuse" might be viewed as an attempt to create an obligation to criminalize misuse, which should be dealt with in article 4. As a result, the words "in accordance with available means" were added and the phrase "otherwise misused" was revised and moved to clarify that the provision would call upon States only to prevent misuse by employing high-quality documents. Three delegations continued to seek the deletion of the reference to "misuse". One delegation also sought to replace the words "shall adopt" with the words "are encouraged to adopt".

[4]The revisions to former paragraph 2 of article 12, now subparagraph *(b)*, resulted from the work of an informal drafting group during the sixth session of the Ad Hoc Committee. The new text was not considered prior to adjournment and still required agreement. A number of delegations had expressed concern about the uncertainty of the previous text and the underlying policy objectives. It emerged that the provision was seen not only as a control on materials and blank or unissued documents, but also as a more general control on the issuance process. Some delegations also expressed concern about the possible cost implications of this provision and asked that a reference to "in accordance with available means" should be included. There was general agreement that the underlying objective was to ensure that, once a high standard for the quality of documents was set by subparagraph *(a)*, the more sophisticated documents did not fall into the hands of smugglers at any stage of the production or issuance process. The Chairperson noted that subparagraph *(a)* dealt with the quality of documents and called upon delegations to form an informal drafting group to develop a revised text based on three new topics: the security of documents in production and before issuance; the security or integrity of the issuance process itself; and the validation or verification of documents after they had been issued. It was noted that the text of this provision was parallel to the text of article 9 of the draft trafficking in persons protocol, as that text was reorganized at the sixth session. During deliberations on that text, the Ad Hoc Committee had decided to incorporate these same changes for purposes of further discussion.

C. Interpretative notes

The interpretative notes on article 12 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 104 and 105) are as follows:

(a) The term "travel documents" includes any type of document required for entering or leaving a State under its domestic law and the term "identity documents" includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.

(b) The words "falsified or unlawfully altered, replicated or issued" should be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. They should also indicate that the intention was to include both documents that had been forged and genuine documents that had been validly issued but were being used by a person other than the lawful holder.

Article 13. Legitimacy and validity of documents

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 13
"Legitimacy and validity of documents

"Each State Party shall, upon request by another State Party and subject to the domestic laws of the requested Party, verify without undue or unreasonable delay the legitimacy and validity of travel or identity documents issued in the name of the requested State Party and suspected of being used in the smuggling of migrants."

Notes by the Secretariat

1. The version of article 13 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2 and 3).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 13
"Legitimacy and validity of documents

"States Parties shall, upon request by other States Parties and subject to the domestic laws of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used in the smuggling of migrants."[1]

[1]At the sixth session of the Ad Hoc Committee, three changes to this provision were agreed upon: the reference to "Party" was changed to "State Party" (proposal by the United Kingdom of Great Britain and Northern Ireland); the words "without undue or unreasonable delay" were replaced with the words "within a reasonable time" (proposal by Morocco); and the reference to "documents issued" was expanded to read "issued or purported to have been issued" (proposal by Canada). It was noted that the text of this provision was parallel to the text of article 6, paragraph 3, of the trafficking in persons protocol, as that text was reorganized at the sixth session. During the deliberations on that text, the Ad Hoc Committee had decided to incorporate these same changes, for purposes of further discussion.

Notes by the Secretariat

2. A new text of article 13 resulting from the work of an informal drafting group that met during the sixth session of the Ad Hoc Committee read as follows:

"Article 13
"Legitimacy and validity of documents

"States Parties shall, upon request by other States Parties and in accordance with the domestic law of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used in the smuggling of migrants."

That revised text of the article was discussed at the informal consultations held during the ninth session of the Ad Hoc Committee, which recommended that it should be adopted (see the draft text of the protocol contained in document A/AC.254/4/Add.1/Rev.6, in which the revised article was incorporated). It was noted that the text of the article corresponded to article 9 bis of the draft trafficking in persons protocol.

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 13, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

C. Interpretative note

The interpretative note on article 13 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 106) is as follows:

The term "travel documents" includes any type of document required for entering or leaving a State under its domestic law and the term "identity documents" includes any document commonly used to establish the identity of a person in a State under the laws or procedures of that State.

Article 14. Training and technical cooperation

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 14
"Training

"1. Each State Party shall provide or strengthen specialized training for immigration and other relevant officials in preventing the smuggling of migrants and in treating smuggled migrants.

"2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the smuggling of migrants and to protect the rights of victims of such [smuggling] [trafficking] and illegal transport. Such training shall include, inter alia:

"*(a)* Improving the security and quality of travel documents;

"*(b)* Recognizing and detecting fraudulent travel or identity documents;

"*(c)* Gathering criminal intelligence, especially relating to the identification of organizations or criminal associations known or suspected to be engaged in the smuggling of migrants, the methods used to transport smuggled migrants, the misuse of travel or identity documents for smuggling migrants and the means of concealment used in the smuggling of migrants;

"*(d)* Improving procedures for searching for and detecting, at conventional and non-conventional points of entry and exit, concealed, undocumented or improperly documented persons; and

"*(e)* Recognizing the need to provide humane treatment to and protect the human rights of migrants.

"3. Each State Party shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise should consider providing technical assistance to States that are frequently used as States of origin or as transit States for the smuggling of migrants."

Notes by the Secretariat

1. The version of article 14 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2-4), with the exception of one editorial amendment in paragraph 1 of the text contained in document A/AC.254/4/Add.1/Rev.4, where the words "States Parties" replaced the words "each State Party" (See note 1 by the Secretariat concerning the preamble of the protocol.)

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 14
"Training

"1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the smuggling of migrants and in treating smuggled migrants.

"2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the smuggling of migrants and to protect the rights of victims of such [smuggling] [trafficking] and illegal transport. Such training shall include, inter alia:

"*(a)* Improving the security and quality of travel documents;

"*(b)* Recognizing and detecting fraudulent travel or identity documents;

"*(c)* Gathering criminal intelligence, relating in particular to the identification of organizations or criminal associations known to be or suspected of being engaged in the smuggling of migrants, the methods used to transport smuggled migrants, the misuse of travel or identity documents for smuggling migrants and the means of concealment used in the smuggling of migrants;

"*(d)* Improving procedures for searching for and detecting, at conventional and non-conventional points of entry and exit, concealed, undocumented or improperly documented persons; and

"*(e)* Recognizing the need to provide humane treatment to and protect the human rights of migrants.

"3. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise should consider providing technical assistance to States that are frequently used as States of origin or as transit States for the smuggling of migrants."

Notes by the Secretariat

2. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 14, as amended. Colombia and Mexico suggested that reference to the protection of the rights of smuggled persons should be included in paragraph 1 (see also notes 4 and

5 by the Secretariat concerning article 2 of the protocol). The final text of paragraph 1 was approved after consultations and as amended by Oman. An additional phrase was inserted in paragraph 2 to expand the obligation to cooperate with "non-governmental organizations, other relevant organizations and other elements of civil society", based on a proposal by Mexico. Amendments proposed by Mexico and Pakistan concerning the content of subparagraph 2 *(d)* were also approved. There was also an agreement to reverse the order of the two sentences in paragraph 3 and use the words "shall consider" instead of the words "should consider". Finally it was decided that the title of the article should be amended to include "technical cooperation". The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly see resolution 55/25, annex III)

Article 14
Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(a) Improving the security and quality of travel documents;

(b) Recognizing and detecting fraudulent travel or identity documents;

(c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;

(d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and

(e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15. Other prevention measures

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 11
"Prevention

"1. Each State Party shall adopt such measures as may be necessary to detect and prevent the smuggling of migrants between its territory and that of other States Parties, by strengthening border controls, including by checking persons and travel or identity documents, and, where appropriate, by inspecting and seizing vehicles and vessels.

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication."

Notes by the Secretariat

1. See footnote 1 concerning article 17 of the protocol.

2. The version of article 11 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2-6).

Eleventh session: 2-28 October 2000

Holy See (A/AC.254/5/Add.27)

The Holy See proposed adding the following paragraph at the end of the article:

"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."

China (A/AC.254/5/Add.27)

China proposed that a new article should be added after article 11 to read as follows:

"Article (…)
"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."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 11, as amended, including the title. It was decided that paragraphs 1 and 2 of article 10, on information, should be moved to the present article (see note 4 by the Secretariat concerning article 10 of the protocol). Former paragraph 2, as cited above, was moved to the final text of article 11, on border measures (see note 4 by the Secretariat concerning article 11 of the protocol). Paragraph 3 of the final text of the article was amended after consultations and on the basis of the above-mentioned proposals of the Holy See and China. The phrase "shall promote or strengthen, as appropriate" in this paragraph reflects suggestions by Mexico and the United Kingdom of Great Britain and Northern Ireland. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 15
Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16. Protection and assistance measures

A. Negotiation texts

Notes by the Secretariat

1. At the fourth session of the Ad Hoc Committee, the United Nations High Commissioner for Human Rights submitted an informal note, in which it was stressed that the protocol must commit itself to preserving and protecting the fundamental rights to which all persons, including illegal migrants, were entitled. It was also highlighted that the respect for basic rights did not, of course, prejudice or otherwise restrict the sovereign right of all States to decide who should or should not enter their territories (see A/AC.254/16, para. 5). At the same session, the representative of Ecuador made a statement on behalf of the Group of Latin American and Caribbean States. The Group expressed its appreciation to the United Nations High Commissioner for Human Rights for the above-mentioned informal note and recalled that the protocol should be directed at combating illegal trafficking in migrants and protecting the rights of migrants. The Group also shared the view expressed by the High Commissioner that respect for the basic rights of migrants did not prejudice or otherwise restrict the sovereign right of all States to decide who should or should not enter their territories. According to the Group, the protocol could not be used as an instrument for criminalizing migration, which was a social and historical phenomenon, nor should it stimulate xenophobia, intolerance and racism (see A/AC.254/30-E/CN.15/2000/4, para. 39).

Ninth session: 5-16 June 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"[Article 7 quinquiens[1]
"Measures for the protection of migrants

"1. States Parties that have not yet done so shall adopt the necessary legislation or other measures to preserve the rights of migrants, as accorded under applica-

[1]This merged proposal was made by Mexico and Morocco, based on earlier texts (see A/AC.254/5/Add.24). There was a general discussion of the proposal at the informal consultations held during the ninth session of the Ad Hoc Committee, which recommended that it should be incorporated into chapter III of the protocol for purposes of further discussion. Most delegations supported the objective of protecting migrants, but a number had concerns about specific elements of the proposed text. Delegations that supported the text cited the need to take positive measures to protect migrants and for an overall balance between the policies set out in the protocol. Delegations that expressed concerns felt that some elements of the proposal overlapped with article 15 bis, but indicated a willingness to consider further changes to that provision based on the present text and on the non-discrimination provision in article 13, paragraph 2, of the draft trafficking in persons protocol (see A/AC.254/4/Add.3/Rev.6). The informal consultations recommended that a discussion of specific elements of the proposal should be resumed at the subsequent session of the Ad Hoc Committee at which the draft protocol was to be taken up and the Chairman asked delegations to use the intervening time to examine the text more carefully. The consultations recommended that should the text be adopted, it should appear in square brackets at this point in the draft protocol, pending a decision about its final placement.

ble international law, in particular the right to life, the principles of non-discrimination and non-refoulement and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[2]

"2. States Parties shall afford migrants effective protection against violence that may be inflicted upon them, whether by public officials or by private individuals, groups or institutions, by reason of having been smuggled.[3]

"3. States Parties shall afford due assistance, as far as possible, to migrants whose life or safety has been endangered by reason of having been smuggled.[4]

"4. At the time of any detention, migrants shall be informed of their right to the protection and assistance of the consular or diplomatic authorities of the State of which they are nationals.[5]]"

Eleventh session: 2-28 October 2000

Colombia (A/AC.254/L.237 and Corr.1)

Colombia was in favour of retaining article 7 quinquiens within the text of the protocol, but proposed the addition of a new paragraph as follows:

"In applying the provisions of this article, States Parties shall take into account the special needs of women and children."

Notes by the Secretariat

2. In a note submitted during the eighth session of the Ad Hoc Committee by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration, the need for including a specific and explicit provision for the protection of smuggled children had been emphasized (see A/AC.254/27 and Corr.1, para. 19).

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[2]At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations expressed concern that this provision overlapped with existing article 15 bis. Many delegations noted that the proposed text contained a positive obligation that was not found in article 15 bis and some supported it, while others opposed it for that reason. In an informal note submitted during the fourth session of the Ad Hoc Committee, the United Nations High Commissioner for Human Rights had urged that consideration should be given to inserting such a provision in the protocol to ensure respect for and protection of the rights of illegal migrants owed to them under applicable international law. In the same note, it had been pointed out that this provision could be strengthened through reference to the core rights to which irregular or illegal migrants were entitled (see A/AC.254/16, para. 6).

[3]At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations expressed concern about the reference to public officials in this paragraph. Several noted that matters of violent treatment were already the subject of domestic criminal law in all States.

[4]At the informal consultations held during the ninth session of the Ad Hoc Committee, most delegations indicated either support for or acceptance of this proposed paragraph.

[5]At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations expressed support for this proposal. Many noted that the right to consular assistance was already found in the Vienna Convention on Diplomatic Relations of 1961 (United Nations, *Treaty Series*, vol. 500, No. 7310) and the Vienna Convention on Consular Relations of 1963 (United Nations, *Treaty Series*, vol. 596, No. 8638). Some felt that this made its inclusion in the present protocol unnecessary, while others indicated that they could support its inclusion, provided that the wording matched that of the earlier instruments exactly.

Recommendations of the informal working group on article 7 quinquiens, submitted at the request of the Chairperson (A/AC.254/L.261)

The informal working group proposed to continue work on article 7 quinquiens on the basis of the following text:[6]

"Article 7 quinquiens
"Protection and assistance measures

"1. In implementing this Protocol, States Parties shall take, consistent with their obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 4 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

"2. States Parties shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 4 of this Protocol.

"3. States Parties shall afford appropriate assistance to migrants whose life or safety are endangered by reason of being the object of conduct set forth in article 4 of this Protocol.

"4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

"5. In the case of the detention of a person who has been the object of conduct set forth in article 4 of this Protocol, States Parties shall comply with their obligations under the Vienna Convention on Consular Relations, where applicable, including informing the person concerned without delay about the provisions concerning notification to and communication with consular officers."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 7 quinquiens, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

4. It should be noted that the representative of Bangladesh requested that the report of the Ad Hoc Committee on its eleventh session should reflect his country's position on article 16, paragraph 5. In the view of the representative, that paragraph was overly restrictive. The obligation to inform smuggled migrants about rights of consular access should have been expanded to create a further right to be informed of other rights set forth in this

[6]The text of article 7 quinquiens was produced by an informal working group chaired by the Holy See on the basis of the original text proposed by Mexico and Morocco and a joint proposal by Austria and Italy and proposals by Colombia and the Philippines. It was discussed by the Ad Hoc Committee and agreed to ad referendum, pending the drafting of the *travaux préparatoires* and the translation of the text into the five other official languages of the United Nations for final consideration by the Ad Hoc Committee.

article. The representative also expressed concern that, by referring to the Vienna Convention on Consular Relations (United Nations, Treaty Series, vol. 596, No. 8638), the paragraph would not apply to States parties to the protocol that had not ratified or acceded to that Convention.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 16
Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations,[7] where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

C. Interpretative notes

The interpretative notes on article 16 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 107-110) are as follows:

Paragraph 1

(a) In accordance with articles 3 and 4, the phrase "persons who have been the object of conduct set forth in article 6 of this Protocol" refers only to migrants who have been smuggled as set forth in article 6. It is not intended to refer to migrants who do not fall within the ambit of article 6. This is clearly set forth in article 19 (Saving clause), which provides that nothing in the protocol shall affect the rights of individuals under international law, including humanitarian law and international human rights law.

[7]United Nations, *Treaty Series*, vol. 596, Nos. 8638-8640.

(b) The intention in listing certain rights in this paragraph was to emphasize the need to protect those rights in the case of smuggled migrants, but the provision should not be interpreted as excluding or derogating from any other rights not listed. The words "consistent with its obligations under international law" were included in the paragraph to clarify this point further.

(c) This paragraph should not be understood as imposing any new or additional obligations on States parties to this protocol beyond those contained in existing international instruments and customary international law.

Paragraph 2

(d) The words "by individuals or groups" were intended to refer to individuals or groups under the jurisdiction of the State party concerned.

Article 17. Agreements and arrangements

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Chapter III. Final provisions

"Article N

"1. States Parties shall adopt every legislative and administrative measure needed in order to comply with the obligations deriving from this Protocol, in respect for the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States.

"2. States Parties shall consider the conclusion of bilateral or regional agreements or understandings aimed:

"*(a)* At establishing the most appropriate and effective measures to prevent, combat and limit illegal trafficking and transport of migrants, in accordance with this Protocol; or

"*(b)* At enhancing the provisions of this Protocol among themselves."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"III. Cooperation, prevention and other measures

"Article 8
"Compliance measures and arrangements

"1. The Parties shall adopt every legislative and administrative measure needed in order to comply with the obligations deriving from this Protocol, having respect for the principles of sovereignty, territorial integrity and non-interference in internal affairs.

"2. The Parties shall consider the conclusion of bilateral or regional agreements or understandings aimed at:

"*(a)* Establishing the most appropriate and effective measures to prevent, combat and limit the illegal smuggling of migrants, in accordance with this Protocol; or

"*(b)* Enhancing the provisions of this Protocol among themselves."

Notes by the Secretariat

1. The version of article 8 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2 and 3).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"III. Cooperation, prevention and other measures[1]

"Article 8
"Compliance measures and arrangements

"1. States Parties shall adopt every legislative and administrative measure needed in order to comply with the obligations deriving from this Protocol, having respect for the principles of sovereignty, territorial integrity and non-interference in internal affairs.

"2. States Parties shall consider the conclusion of bilateral or regional agreements or understandings aimed at:

"*(a)* Establishing the most appropriate and effective measures to prevent, combat and limit the illegal smuggling of migrants, in accordance with this Protocol; or

"*(b)* Enhancing the provisions of this Protocol among themselves."

Notes by the Secretariat

2. The version of article 8 contained in document A/AC.254/4/Add.1/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 8
"Compliance measures and arrangements

"1. States Parties shall adopt every legislative and administrative measure needed in order to comply with the obligations deriving from this Protocol, having respect for the principles of sovereignty, territorial integrity and non-interference in internal affairs.

[1]There was a brief discussion at the sixth session of the Ad Hoc Committee about whether articles 8 to 11 were common with provisions of the draft convention, and, if so, whether they were needed in the draft protocol itself. No changes were made to the text, but several new proposals were submitted for consideration. Mexico proposed new text for articles 8 to 11 (see A/AC.254/L.96). Argentina proposed a new chapter III of the protocol, dealing with trafficking in migrants by land (see A/AC.254/L.99). It was decided that further discussion of these articles would be deferred until texts for the corresponding provisions of the draft convention had been agreed upon.

"2. States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements[2] or understandings aimed at:

"*(a)* Establishing the most appropriate and effective measures to prevent, combat and limit the illegal smuggling of migrants, in accordance with this Protocol; or

"*(b)* Enhancing the provisions of this Protocol among themselves."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 8, as amended. It was decided to delete paragraph 1 of article 8 as it was covered by article 4 of the convention. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 17
Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

(a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or

(b) Enhancing the provisions of this Protocol among themselves.

[2]The addition of the words "or operational arrangements" was recommended by the informal consultations held during the ninth session of the Ad Hoc Committee, following a recommendation to delete article 7 quater.

Article 18. Return of smuggled migrants

A. Negotiation texts

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"[Article 15
"Return of smuggled migrants

"1. Each State Party agrees to facilitate and accept, without delay, the return of a person who has been smuggled contrary to the terms of this Protocol who is a national of that State Party or who had the right of abode in the territory of that State Party at the time of entry into the receiving State.

"2. At the request of the receiving State Party, each State Party shall, without undue or unreasonable delay, verify whether a person who has been smuggled contrary to the terms of this Protocol is a national of the requested State Party.

"3. In order to facilitate the return of a person smuggled contrary to the terms of this Protocol without proper documentation, the State Party of whom the person is a national or in which the person had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person's readmission into its territory.]"[1]

Notes by the Secretariat

1. The version of article 15 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2 and 3). The text also remained unchanged in documents A/AC.254/4/Add.1/Revs.4-6, with the exception of an editorial amendment in the first two paragraphs, by which the words "States Parties" replaced the words "each State Party". (See also note 1 by the Secretariat concerning the preamble of the present protocol.)

2. At the sixth session of the Ad Hoc Committee, a majority of delegations supported retaining this article, subject to further discussion. Amendments were proposed by France

[1]This article was proposed by the United States and supported by a number of other delegations. Many other delegations expressed concern about the issue of the return of migrants and about the compatibility of such a provision with human rights instruments, as well as about the potential implications of such a provision on extradition.

(for implementation on a case-by-case basis), the Philippines (for a new paragraph emphasizing the rights of migrants and their status as victims) and Ukraine (to limit paragraph 1 to persons who were nationals or had a right of permanent abode in the source country), but there was no general agreement in support of any of those proposals. Substantively, some delegations expressed the view that making provision for the return of migrants was necessary as a means of deterring migrants and organized criminal groups and also to ensure the right of the migrants themselves to return to their place of origin. Other delegations proposed either deletion or modification on the basis that the provision was beyond the mandate given to the Ad Hoc Committee by the General Assembly and that it unfairly placed the burden on the migrants themselves. One suggested compromise was that the provision might be retained, but with language that would ensure that migrants could only be returned voluntarily and that their rights of due process were protected. The Chairperson advised delegations to work unofficially on a new text, which would have the status only of a proposal from one or more sponsoring delegations at a future session.

Eleventh session: 2-28 October 2000

Austria and Italy (A/AC.254/5/Add.35)

"Article 15
"Return of smuggled migrants

"1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a smuggled migrant who is a national of that State Party or who had the right of permanent residence in the territory of that State Party at the time of entry into the receiving State.

"2. At the request of the receiving State Party, the State Party concerned shall, without undue or unreasonable delay, verify whether a smuggled migrant is a national of the requested State Party or had the right of permanent residence in the territory of the requested State Party at the time of entry into the receiving State Party.

"3. In order to facilitate the return of a smuggled migrant without proper documentation, the State Party of which the migrant is a national or in the territory of which the migrant had the right of permanent residence at the time of entry into the receiving State shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the migrant's readmission into its territory.

"4. Each State Party involved with the return of a smuggled migrant shall take all appropriate measures to carry out the return with due regard for the safety of the smuggled migrant.

"5. Paragraphs 1 to 3 of this article shall not affect the obligations entered into under any other treaty, bilateral or multilateral, or any operational arrangement that governs, in whole or in part, the return of smuggled migrants applicable at the time of entry into force of this Protocol.

"6. States Parties may cooperate with relevant international organizations regarding the implementation of this article.

"7. The provisions of this article shall be without prejudice to any right afforded to the smuggled migrant by any domestic law of the receiving State."

Note by the Secretariat concerning the status of discussions on article 15 (A/AC.254/L.269)

The note by the Secretariat read as follows:

"1. During the consultations on the revised draft migrants protocol held from 9 to 13 October 2000 during the eleventh session of the Ad Hoc Committee, article 15 of the draft protocol was discussed, but the discussions were suspended. It was agreed that the text on which those discussions were based, a proposal by Austria and Italy (see A/AC.254/5/Add.35), would be incorporated into the interim text of the draft protocol (A/AC.254/L.250/Add.3) to facilitate further discussion.

"2. During the consultations, there was also agreement on a proposal by Austria to amend paragraph 5 of the proposal on article 15 by Austria and Italy (A/AC.254/5/Add.35) by inserting the word "applicable" before the word "operational" and deleting the words "applicable at the time of entry into force of this Protocol" at the end of the paragraph, so that the paragraph would read as follows:

'5. Paragraphs 1 to 3 of this article shall not affect the obligations entered into under any other treaty, bilateral or multilateral, or any applicable operational arrangement that governs, in whole or in part, the return of smuggled migrants.'

"3. A proposal by Mexico to amend paragraph 1 of article 15 was also under consideration when the discussions were suspended. According to that proposal, paragraph 1 would be replaced with the following two new paragraphs:

'(...) Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a smuggled migrant who is a national of that State Party.

'(...) Each State Party shall consider the possibility of facilitating and accepting the return of a person who had the right of permanent residence in the territory of that State Party at the time of entry into the receiving State in accordance with its domestic law.'

"4. Morocco made the following alternative proposal for article 15:

'States Parties are encouraged to conclude bilateral arrangements in order to consider the best practical ways and means of facilitating the return of smuggled migrants, taking into account the wishes of the migrants.'

"5. The Philippines proposed to amend the proposal by Morocco to read as follows:

"States Parties are encouraged to conclude bilateral arrangements in order to consider the best practical ways and means of facilitating the safe, orderly and dignified return of smuggled migrants, taking into account the wishes of the migrants.'

"6. China proposed that the following note concerning article 15 be placed in the *travaux préparatoires*:

'The *travaux préparatoires* should indicate that nothing in article 15 of the Protocol should be interpreted as requiring any State Party to accept the return of any person who has been the object of conduct described in article 4 of the Protocol before that State Party has verified that the person whose return is sought by another State Party is one of its nationals.'"

Recommendations of the informal working group on article 15 (A/AC.254/L.274)

The informal working group proposed to continue work on article 15 on the basis of the following text:

"Article 15
"Return of smuggled migrants

"1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 4 of this Protocol and who is a national of that State Party or who has the right of permanent residence in the territory of that State Party at the time of return.

"[1 bis. Each State Party shall consider the possibility of facilitating and accepting the return of a person who had the right of permanent residence in the territory of that State Party at the time of entry into the receiving State in accordance with its domestic law.]

"2. At the request of the receiving State Party, the State Party concerned shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 4 of the Protocol is a national of the requested State Party or has the right of permanent residence in the territory of the requested State Party.

"3. In order to facilitate the return of a person who has been the object of conduct set forth in article 4 of the Protocol without proper documentation, the State Party of which the person is a national or in the territory of which the person has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person's travel to and re-entry into its territory.

"4. Each State Party involved with the return of a person who has been the object of conduct set forth in article 4 of the Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

"5. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the subject of conduct set forth in article 4 of this Protocol.

"6. States Parties may cooperate with relevant international organizations regarding the implementation of this article.

"7. The provisions of this article shall be without prejudice to any right afforded to the smuggled migrant by any domestic law of the receiving State."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 15, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 18
Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

C. Interpretative notes

The interpretative notes on article 18 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 111-116) are as follows:

(a) This article is based on the understanding that States parties would not deprive persons of their nationality contrary to international law, thereby rendering them stateless.

(b) The term "permanent residence" is understood throughout this article as meaning long-term, but not necessarily indefinite residence. This article is understood not to prejudice national legislation regarding the granting of the right to residence or the duration of residence.

(c) The understanding of the Ad Hoc Committee was that a return under this article shall not be undertaken before the nationality or right of permanent residence of the person whose return is sought has been duly verified.

Paragraph 2

(d) There is no inconsistency between paragraphs 1 and 2 of this article. Paragraph 1 deals with the case of a person who is a national or has the right of permanent residence at the time of return. Paragraph 2 is supplementary to paragraph 1 and deals with the case of a person who had the right of permanent residence at the time of entry, but no longer has it at the time of return.

Paragraph 4

(e) The term "travel documents" includes any type of document required for entering or leaving a State under its domestic law.

Paragraph 8

(f) The references to treaties, agreements or arrangements in this paragraph include both agreements that deal specifically with the subject matter of the protocol and more general readmission agreements that include provisions dealing with illegal migration.

Final provisions

Article 19. Saving clause

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article R

"The provisions of this Protocol shall be without prejudice to the obligations of States Parties under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees."

Notes by the Secretariat

1. At the sixth session of the Ad Hoc Committee, it was agreed that various provisions, including article 5, paragraph 2, and portions of article 7 ter, would be revised and added to the final provisions as a saving clause applicable to the entire protocol. Details of the text were deferred pending discussion of the final provisions.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 15 bis
"Saving clause

"Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the

1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein."[1, 2]

Notes by the Secretariat

2. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 15 bis, as amended with the inclusion of an additional paragraph 2 to bring it in line with the corresponding article 13 (final article 14) of the trafficking in persons protocol. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

IV. Final provisions

Article 19
Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[3] and the 1967 Protocol[4] relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

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[1]At the eighth session of the Ad Hoc Committee, it was decided to replace the previous text of paragraph 2 of article 5 with new text based on the proposal of Belgium and Norway (A/AC.254/L.189) and article 13 of the revised draft trafficking in persons protocol (A/AC.254/4/Add.3/Rev.5), as agreed at the seventh session. It was also decided to place the text here for greater consistency with the text of the trafficking in persons protocol. The inclusion of the principle of non-refoulement was proposed in the note submitted during the eighth session of the Ad Hoc Committee by the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Organization for Migration contained in document A/AC.254/27 and Corr.1, para. 20; see also the informal note submitted during the fourth session of the Ad Hoc Committee by the United Nations High Commissioner for Human Rights contained in document A/AC.254/16, para. 8. Some delegations expressed concern about the inclusion of the words "and the principle of non-refoulement as contained therein". In their view this was redundant vis-à-vis the international instruments cited in the new article, which also contained principles of non-refoulement. One delegation also felt that the reference to a specific principle of international law could lead to the interpretation that other established principles might not apply. One delegation noted that text dealing with "principles of non-discrimination" appeared in the original proposal of Belgium and Norway and in article 13 of the trafficking in persons protocol and wondered whether they should be included in this provision as well. The discussions on this provision also considered proposals of Mexico (A/AC.254/L.160) and Morocco (see A/AC.254/5/Add.21). The text of those proposals was not adopted, but might be relevant to other provisions and Mexico and Morocco reserved the right to raise their proposals again at the appropriate time.

[2]At the eighth session of the Ad Hoc Committee, some delegations expressed concerns about the implications of this provision for States that were not parties to the instruments referred to. In particular, Saudi Arabia and the United Arab Emirates were concerned that, as a result of this wording, their Governments might be subject to obligations under those instruments, to which they were not parties, should they become parties to the convention and the protocol. It was pointed out that the opening words protected the integrity of existing obligations, but could not be interpreted as creating new ones. Thus, a State that was not already subject to such an obligation would not become subject to it simply by becoming a party to the protocol. Saudi Arabia and the United Arab Emirates asked for this fact to be noted in the travaux préparatoires.

[3]United Nations, *Treaty Series*, vol. 189, No. 2545.

[4]Ibid., vol. 606, No. 8791.

C. Interpretative notes

The interpretative notes on article 19 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, paras. 117 and 118) are as follows:

(a) The protocol does not cover the status of refugees.

(b) This protocol is without prejudice to the existing rights, obligations or responsibilities of States parties under other international instruments, such as those referred to in this article. Rights, obligations and responsibilities under another instrument are determined by the terms of that instrument and whether the State concerned is a party to it, not by this protocol. Therefore, any State that becomes a party to this protocol but is not a party to another international instrument referred to in the protocol would not become subject to any right, obligation or responsibility under that other instrument.

Article 20. Settlement of disputes

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 17
"Settlement of disputes

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time [ninety days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Protocol, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

"3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

Notes by the Secretariat

1. The text of article 17 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session, without prejudice to its content, which was still under negotiation. Only necessary editorial changes were made to the text. For issues related to this provision, see article 35 of the convention in part one and article 15 of the trafficking in persons protocol in part two.

2. The version of article 17 contained in A/AC.254/4/Add.1/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 17
"Settlement of disputes

"1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

"2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

"3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. 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.

"4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 17 without further amendment. (See the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.)

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 20
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. 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.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21. Signature, ratification, acceptance, approval and accession

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article S

"1. This Protocol is open for signature to all States until [...] at the Headquarters of the United Nations in New York.

"2. This Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"3. This Protocol is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 17
"Signature, accession, ratification and entry into force

"1. This Protocol shall be open for signature, by any State that has signed the Convention, at United Nations Headquarters in New York until [...]. Thereafter, it shall be open for accession by any State Party to the Convention.

"2. This Protocol shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"3. This Protocol shall enter into force on the thirtieth day following the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations. In the event that the deposit of the twentieth instrument of ratification, acceptance, approval or accession occurs prior to the entry into force of the Convention, this Protocol shall not enter into force until the entry into force of the Convention."

Notes by the Secretariat

1. The version of this article contained in A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2 and 3).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 18
"Signature, ratification, acceptance, approval, accession and reservations

"1. This Protocol shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. The present Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"Option 1

"[3. No reservations may be made in respect of any provision of this Protocol.]

"Option 2

"[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.[1]]

"[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

"[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

"6. This Protocol is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

Notes by the Secretariat

2. The text of article 18 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session, without prejudice to its content, which was still under negotiation. Only necessary editorial changes were made to the text. For issues related to this

[1]United Nations, *Treaty Series*, vol. 1155, No. 18232.

provision, see article 36 of the convention in part one and article 16 of the trafficking in persons protocol in part two.

3. The version of article 18 contained in document A/AC.254/4/Add.1/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 18
"Signature, ratification, acceptance, approval and accession

"1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

"2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

"3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

"4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence."

Notes by the Secretariat

4. Following its approval, at its tenth session, of the text of the convention against transnational organized crime, and in particular the corresponding provision of the convention on signature, ratification, acceptance, approval and accession, the Ad Hoc Committee, at its eleventh session, considered, finalized and approved article 18 without further amendment. (See the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.)

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 21
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

C. Interpretative note

The interpretative note on article 21 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions (see A/55/383/Add.1, para. 119) is as follows:

While the protocol has no specific provisions on reservations, it is understood that the Vienna Convention on the Law of Treaties of 1969[2] applies regarding reservations.

[2]Ibid.

Article 22. Entry into force

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article T

"1. This Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

"2. For each State ratifying or acceding to this Protocol after the deposit of the twentieth instrument of ratification or accession, the Protocol shall enter into force on the thirtieth day after deposit by such State of the instrument of ratification or accession."

Notes by the Secretariat

1. In the subsequent versions of the draft protocol (A/AC.254/4/Add.1/Revs.1-3), the provision on entry into force was incorporated as paragraph 3 of article 17 (Signature, accession, ratification and entry into force), which became article 21 of the final protocol.

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 19
"Entry into force

"1. The present Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...] instrument of ratification, acceptance, approval or accession.

"2. For each State Party ratifying, accepting, approving or acceding to the Protocol after the deposit of the [...] instrument of such action, the Protocol shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument."

Notes by the Secretariat

2. The text of article 19 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session, without prejudice to its content, which was still under negotiation. Only necessary editorial changes were made to the text. For issues related to this provision, see article 38 of the convention in part one and article 17 of the trafficking in persons protocol in part two.

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 19, as amended. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 22
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23. Amendment

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 20
"Amendment

"1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

"2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

"3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted."

Notes by the Secretariat

1. The text of article 20 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session, without prejudice to its content, which was still under negotiation. Only necessary editorial changes were made to the text. For issues related to this provision, see article 39 of the convention in part one and article 18 of the trafficking in persons protocol in part two.

2. The version of article 20 contained in document A/AC.254/4/Add.1/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 20
"Amendment

"1. After the expiry of five years from the entry into force of this Protocol, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

"2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

"3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

"4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

"5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved."

Notes by the Secretariat

3. Following its approval, at its tenth session, of the text of the convention against transnational organized crime, and in particular its corresponding provision on amendment, the Ad Hoc Committee considered, finalized and approved article 20 of the present protocol at its eleventh session without further amendment. (See the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III) that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.)

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 23
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24. Denunciation

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article U

"1. Any State Party may withdraw from this Protocol by written notification to the Secretary-General of the United Nations.

"2. Withdrawal shall take effect twelve months after the date on which notification is received by the Secretary-General of the United Nations."

Notes by the Secretariat

1. The version of this article contained in document A/AC.254/4/Add.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.1-3).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 21
"Denunciation

"A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General."

Notes by the Secretariat

2. The text of article 21 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session, without prejudice to its content, which was still under negotiation. Only necessary editorial changes were made to the text. For issues related to this provision, see article 40 of the convention in part one and article 19 of the trafficking in persons protocol in part two.

3. The version of article 21 contained in document A/AC.254/4/Add.1/Rev.4 remained unchanged in the intermediate draft of the protocol (A/AC.254/4/Add.1/Rev.5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.1/Rev.6)

"Article 21
"Denunciation

"1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

"2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it."

Notes by the Secretariat

4. Following its approval, at its tenth session, of the text of the convention against transnational organized crime, and in particular its corresponding provision on denunciation, the Ad Hoc Committee considered, finalized and approved article 21 of the present protocol at its eleventh session without further amendment. (See the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.)

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 24
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25. Depositary and languages

A. Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article V

"The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States."

Notes by the Secretariat

1. The version of this article contained in document A/AC.254/4/Add.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.1-3).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.4)

"Article 22
"Languages and depositary

"1. The Secretary-General of the United Nations is designated depositary of the present Protocol.

"2. The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

"IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol."

Notes by the Secretariat

2. The text of article 22 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session, without prejudice to its content, which was still under

negotiation. Only necessary editorial changes were made to the text. For issues related to this provision, see article 41 of the convention in part one and article 20 of the trafficking in persons protocol in part two.

3. At its eleventh session, the Ad Hoc Committee considered, finalized and approved article 22 without further amendment. (See the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383, sect. IV, draft resolution, annex III), that was submitted to the General Assembly for adoption pursuant to resolution 54/126 of 17 December 1999.)

B. Approved text adopted by the General Assembly (see resolution 55/25, annex III)

Article 25
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Deleted articles

Notes by the Secretariat

1. The following separate articles were also discussed in the context of the negotiation process of the present protocol, but were eventually deleted. As already indicated (see note 4 by the Secretariat concerning article 37 of the convention in part one and the chapter on deleted articles of the trafficking in persons protocol in part two), the objective of the present publication is to reflect and present the complete picture of the negotiations on the content of the convention and its protocols, irrespective of which provisions were finally included in the approved texts. For this reason, it has been considered appropriate to present the drafts of these articles, as well as the discussions on their content that took place before the decision was made to delete them.

Jurisdiction

Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article D

"If more than one State Party intends to resume jurisdiction over an alleged offender in accordance with article 9 of the Convention, the States Parties concerned shall consult each other with a view to renouncing jurisdiction in order to make possible proceedings in the State Party most directly affected by the commission of the trafficking and transport."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 6
"Jurisdiction[1]

"1. Each State Party shall take legislative measures to establish its jurisdiction over the offences mentioned in article 4 of the present Protocol in accordance with article 9 of the Convention.

[1]It was understood that the provisions on extradition, mutual legal assistance and other forms of international cooperation in criminal matters that appeared in the convention would apply to this protocol. In addition, it was understood that any provisions relating to human rights of detainees should be contained in the convention. However, there was a need to review the question of whether any additional provisions would be necessary in view of the specific nature of the protocol.

"2. If more than one State Party intends to resume jurisdiction over an alleged offender in accordance with paragraph 1 of this article and with article 9 of the Convention, the States Parties concerned shall consult each other with a view to renouncing jurisdiction in order to render possible proceedings in the territory of the State Party most directly affected by the commission of the smuggling of migrants."[2]

Notes by the Secretariat

2. The version of article 6 contained in document A/AC.254/4/Add.1/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.1/Revs.2-4).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.1/Rev.5)

"Article 6
"Jurisdiction

"1. Each State Party shall take legislative measures to establish its jurisdiction over the offences mentioned in article 4 of this Protocol in accordance with article 9 of the Convention.

"2. If more than one State Party intends to assume jurisdiction over an alleged offender in accordance with paragraph 1 of this article and with article 9 of the Convention, the States Parties concerned shall consult each other with a view to renouncing jurisdiction in order to render possible proceedings in the territory of the State Party most directly affected by the commission of the smuggling of migrants."

Notes by the Secretariat

3. At the eleventh session of the Ad Hoc Committee, it was decided to delete this article in view of the mutatis mutandis application of the corresponding provision of the convention against transnational organized crime in cases related to the protocol.

4. The proposal submitted by Austria and Italy (A/AC.254/4/Add.1), contained one additional provision related to jurisdictional issues, which read as follows:

"Article M

"Articles F-K above shall apply when:

"*(a)* The vessel on which the trafficking and transport of migrants is under way is entering into the territorial waters of a Contracting Party;

"*(b)* There are reasonable grounds to suspect that such vessel is bound for entering into the territorial waters or otherwise procuring the illegal entry of migrants into the territory of a Contracting Party."

This provision was eventually dropped and not discussed during the negotiations.

[2]Some delegations were of the view that this paragraph should be made consistent with article 9 of the convention.

Application

Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.1/Rev.3)

"Article 7 quater[3]
"Application

"States Parties shall consider entering into bilateral or regional agreements to facilitate cooperation in applying appropriate, efficient and effective measures to prevent and suppress the smuggling of migrants by sea.[4] States Parties shall also encourage the conclusion of operational arrangements in relation to specific cases (ad hoc arrangements)."[5]

Notes by the Secretariat

5. Based on recommendations made during the informal consultations held from 13 to 15 June 2000 in the context of the ninth session of the Ad Hoc Committee, article 7 quater was deleted and article 8, paragraph 2, of the draft protocol was amended accordingly (see article 17 of the present protocol).

Implementation

Negotiation texts

First session: 19-29 January 1999

Austria and Italy (A/AC.254/4/Add.1)

"Article Q

"1. For the purpose of examining the progress made by States Parties in achieving the implementation of the obligations undertaken in the present Protocol, States Parties shall provide periodic reports to the United Nations Commission on Crime Prevention and Criminal Justice.

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[3]This article was included in the previous versions of the draft protocol (A/AC.254/4/Add.1/Revs.1 and 2) as paragraph 14 of article 7 (Measures against the smuggling of migrants by sea). For the sake of clarity, Austria and Italy proposed a new structure of chapter II of the draft protocol, according to which new articles 7 bis, 7 ter and 7 quater were also included in chapter II.

[4]The language of this provision was derived from article 17, paragraph 9, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627) and from paragraph 9 of the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea (the interim measures), approved in December 1998 by the Maritime Safety Committee of the International Maritime Organization (MSC/Circ.896, annex, and also reproduced in document A/AC.254/CRP.3).

[5]The language of this provision was derived from paragraph 10 of the interim measures.

"2. States Parties shall provide such reports together with the reports submitted in accordance with article 23 of the Convention."

Fourth session: 28 June-9 July 1999

Rolling text (A/AC.254/4/Add.1/Rev.1)

"Article 16
"Implementation[6]

"1. For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention.

"2. The States Parties will provide such reports together with the reports submitted in accordance with article 23 of the Convention."

Notes by the Secretariat

6. At the eleventh session of the Ad Hoc Committee, it was decided that this article should be deleted.

[6]One delegation proposed the deletion of this article because the issue of implementation and reporting requirements would be covered by the convention (see also the views expressed by Cameroon contained in document A/AC.254/L.102).

Part Four

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials supplementary to the United Nations Convention against Transnational Organized Crime

"The States Parties to the present Protocol,

"*(a)* Bearing in mind that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

"*(b)* *Concerned* by the increase, at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and by the serious problems resulting therefrom,

"*(c)* *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

"*(d)* *Considering* the urgent need for all States, especially those States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

"*(e)* *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation, exchange of information, and other appropriate measures at the national, regional and global levels,

"*(f)* *Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization (Interpol), the Interpol Weapons and Explosives Tracking System, to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

"*(g)* *Stressing* that the promotion of harmonized import and export controls over the licit international movement of firearms, ammunition and other related materials,

in addition to a system of procedures for applying them, is essential to the prevention of illicit international trafficking in firearms, their parts and components and ammunition,

"*(h) Recognizing* that States have developed different cultural and historical uses for firearms, and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not intended to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by the States Parties,

"(i) Recalling that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit the States Parties to enact legislation or regulations pertaining to firearm ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

"Have agreed as follows:"

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime

"The States Parties to the present Protocol,

"Option 1

"*(a) Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

"Option 2[1]

"*(a) Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials, owing to the harmful effects of those activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

"Option 1

"*(b) Concerned* by the [increase],[2] at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][3] and other related materials and by the serious problems resulting therefrom,

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[1]Alternative proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[2]The United Kingdom of Great Britain and Northern Ireland proposed replacing the word "increase" with either the word "occurrence" or the words "indications of an increase" (see A/AC.254/5/Add.1 and Corr.1).

[3]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

"Option 2[4]

"*(b) Concerned* that a sizeable portion of all transfers of firearms and ammunition is illicit, having destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of interstate conflict, and that the illicit manufacturing of and trafficking in firearms, ammunition and other related materials constitute serious obstacles to the culture of peace and to meaningful development cooperation,

"Option 1

"*(c) Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][3] and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

"Option 2[4]

"*(c) Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and that there is an urgent need for all States, especially those States that produce, export and import arms, to take measures to achieve those goals and to continue to develop common approaches to solving those problems,

"[(...) *Concerned* about the illicit manufacture of explosives from substances and articles that in and of themselves are not explosives and that are not dealt with in this Protocol, owing to their other lawful uses, but are used for activities related to drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,][3]

"Option 1

"*(d) Considering* the urgent need for all States, especially States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][3] and other related materials,

"Option 2[4]

"*(d) Considering* that immediate action should focus on preventing the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, by exercising tighter control over their legal transfer, on strengthening pertinent laws and regulations, strictly enforcing laws and regulations concerning their use and civilian possession, and on increasing the capacity to combat their illicit possession and transfer, by improving mechanisms for the control of firearms, ammunition and other related materials at their manufacture, distribution, transfer and transit points, as well as by enhancing accountability, transparency and the exchange of information at the national, regional and global levels,

[4]Alternative proposed by Colombia.

"*(e) Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][3] and other related materials requires international cooperation, the exchange of information, and other appropriate measures at the national, regional and global levels,

"[(...) *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition and other related materials in order to prevent them from entering the illicit market,][5]

"*(f) Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, [and the database established by the Customs Cooperation Council (known as the World Customs Organization), the Central Information System,][6] to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][3] and other related materials,

"Option for replacing preambular paragraphs *(e)* and *(f)*[4]

"[(...) *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation and the strengthening of existing international law enforcement support mechanisms such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,]

"*(g) Stressing* that the promotion of [harmonized import and export][7] [and in-transit][3] controls over the licit international movement of firearms, ammunition [, explosives][3] and other related materials, [in addition to a system of procedures for applying them,][8] is essential to the prevention of illicit [international][9] trafficking in firearms, their parts and components and ammunition,

"[(...) *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition, explosives and other related materials in order to prevent them from entering the illicit market,

"(...) *Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,][3]

"Option 1

"*(h) Recognizing* that States have developed different cultural and historical uses for firearms and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not to discourage or diminish lawful

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[5]Addition proposed by South Africa (see A/AC.254/5/Add.5).

[6]Addition proposed by the Customs Cooperation Council (also known as the World Customs Organization) (see A/AC.254/CRP.4).

[7]Pakistan proposed to replace this phrase with the phrase "to promote cooperation in matters relating to import and export". Sweden and the United States of America expressed their opposition to that view and proposed to keep the original phrase.

[8]Mexico proposed deletion of this phrase (see A/AC.254/5/Add.1 and Corr.1). Colombia proposed to keep it but to replace the word "applying" with the word "enforcing".

[9]Deletion proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by States Parties,[3]

"Option 2[4]

"*(h) Recognizing* that some States have developed different cultural and historical uses for firearms, including leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use that are recognized by such States,

"Option 1

"(i) Recalling that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit States Parties to enacting legislation or regulations pertaining to firearms ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

"Option 2[4]

"(i) Recognizing also that States Parties have their respective domestic laws and regulations pertaining to firearms ownership, possession or trade of a wholly domestic character and that States Parties will apply their respective laws and regulations in a manner consistent with this Protocol,

"[(...) *Reaffirming* the principles of sovereignty, non-intervention and the juridical equality of States,][10]

"Have agreed as follows:"

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime[11]

"The States Parties to the present Protocol,

"Option 1

"*(a) Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that inter-

[10]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1) and Colombia.

[11]Japan proposed that the protocol should be entitled "Protocol to Combat the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementary to the United Nations Convention against Transnational Organized Crime", using the same wording as in Economic and Social Council resolution 1998/18 and General Assembly resolution 53/111 (see A/AC.254/L.22).

national illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

"Option 2

"*(a) Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, [their parts and components and][12] ammunition, [explosives and other related materials,][13] owing to the harmful effects of those activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

"Option 1

"*(b) Concerned* by the [increase],[14] at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials and by the serious problems resulting therefrom,

"Option 2

"*(b) Concerned* that a sizeable portion of all transfers of firearms and ammunition is illicit, having destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of interstate conflict, and that the illicit manufacturing of and trafficking in firearms, ammunition and other related materials constitute serious obstacles to the culture of peace and to meaningful development cooperation,

"Option 1

"*(c) Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

"Option 2

"*(c) Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and that there is an urgent need for all States, especially those States that produce, export and import arms, to take measures to achieve those goals and to continue to develop common approaches to solving those problems,

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[12]Addition proposed by Japan (see A/AC.254/L.22). Japan proposed that, throughout the protocol, the words "ammunition [, explosives] and other related materials" should be replaced with the words "their parts and components and ammunition", so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolution 53/111 (see also footnote 11 above).

[13]Deletion proposed by Japan (see A/AC.254/L.22) (see footnote 12 above).

[14]Sweden proposed that the evidence of the "increase" should be quoted or at least mentioned (see A/AC.254/5/Add.5).

"[*(c)* bis *Concerned* about the illicit manufacture of explosives from substances and articles that in and of themselves are not explosives and that are not dealt with in this Protocol, owing to their other lawful uses, but are used for activities related to drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,]

"Option 1

"*(d) Considering* the urgent need for all States, especially States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials,

"Option 2

"*(d) Considering* that immediate action should focus on preventing the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, by exercising tighter control over their legal transfer, on strengthening pertinent laws and regulations, strictly enforcing laws and regulations concerning their use and civilian possession, and on increasing the capacity to combat their illicit possession and transfer, by improving mechanisms for the control of firearms, ammunition and other related materials at their manufacture, distribution, transfer and transit points, as well as by enhancing accountability, transparency and the exchange of information at the national, regional and global levels,

"*(e) Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials requires international cooperation, the exchange of information, and other appropriate measures at the national, regional and global levels,

"Option 1

"[*(e)* bis *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition and other related materials in order to prevent them from entering the illicit market,]

"*(f) Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, [and the database established by the Customs Cooperation Council (known as the World Customs Organization), the Central Information System,] to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials,

"Option 2

"[*(f)* bis *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation and the strengthening of existing international law enforcement support mechanisms such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,]

"*(g) Stressing* that the promotion of [harmonized import and export] [and in-transit] controls over the licit international movement of firearms, ammunition [, explosives] and other related materials, [in addition to a system of procedures for applying them,] is essential to the prevention of illicit [international] trafficking in firearms, their parts and components and ammunition,

"[*(g)* bis *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition, explosives and other related materials in order to prevent them from entering the illicit market,

"*(g)* ter *Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,]

"Option 1

"*(h) Recognizing* that States have developed different cultural and historical uses for firearms and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by States Parties,

"Option 2

"*(h) Recognizing* that some States have developed different cultural and historical uses for firearms, including leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use that are recognized by such States,

"Option 1

"(i) Recalling that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit States Parties to enacting legislation or regulations pertaining to firearms ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

"Option 2

"(i) Recognizing also that States Parties have their respective domestic laws and regulations pertaining to firearms ownership, possession or trade of a wholly domestic character and that States Parties will apply their respective laws and regulations in a manner consistent with this Protocol,

"[*(i)* bis *Reaffirming* the principles of sovereignty, non-intervention and the juridical equality of States,]

"Have agreed as follows:"

Notes by the Secretariat

1. Following the discussion by the Ad Hoc Committee at its fifth session, the title of the draft protocol was revised to correspond to the wording of Economic and Social Council resolution 1998/18 of 28 July 1998 and General Assembly resolutions 53/111 and 53/114, both of 9 December 1998, and therefore read as follows: "Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime".

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.2/Rev.4)

"Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

"The States Parties to the present Protocol,

"Option 1

"*(a) Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

"Option 2

"*(a) Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, [their parts and components and] ammunition, [and other related materials,] owing to the harmful effects of those activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

"Option 1

"*(b) Concerned* by the [increase], at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and by the serious problems resulting therefrom,

"Option 2

"*(b) Concerned* that a sizeable portion of all transfers of firearms and ammunition is illicit, having destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of interstate conflict, and that the illicit manufacturing of and trafficking in firearms, ammunition and other related materials constitute serious obstacles to the culture of peace and to meaningful development cooperation,

"Option 1

"*(c) Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

"Option 2

"*(c) Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and that there is an urgent need for all States, especially those States which produce, export and import arms, to take measures to achieve those goals and to continue to develop common approaches to solving those problems,

"Option 1

"*(d) Considering* the urgent need for all States, especially States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

"Option 2

"*(d) Considering* that immediate action should focus on preventing the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, by exercising tighter control over their legal transfer, on strengthening pertinent laws and regulations, strictly enforcing laws and regulations concerning their use and civilian possession, and on increasing the capacity to combat their illicit possession and transfer, by improving mechanisms for the control of firearms, ammunition and other related materials at their manufacture, distribution, transfer and transit points, as well as by enhancing accountability, transparency and the exchange of information at the national, regional and global levels,

"*(e) Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation, the exchange of information and other appropriate measures at the national, regional and global levels,

"Option 1

"[*(e)* bis *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition and other related materials in order to prevent them from entering the illicit market,]

"*(f) Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, [and the database established by the Customs Cooperation Council (known as the World Customs Organization), the Central Information System,] to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

"Option 2

"[*(f)* bis *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation and the strengthening of existing international law enforcement support mechanisms such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,]

"*(g) Stressing* that the promotion of [harmonized import and export] [and in-transit controls over the licit international movement of firearms, ammunition and other related materials [, in addition to a system of procedures for applying them,] is essential to the prevention of illicit [international] trafficking in firearms, their parts and components and ammunition,

"[*(g)* bis *Stressing* also the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition and other related materials in order to prevent them from entering the illicit market,

"*(g)* ter *Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,]

"Option 1

"*(h) Recognizing* that States have developed different cultural and historical uses for firearms and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by States Parties,

"Option 2

"*(h) Recognizing* that some States have developed different cultural and historical uses for firearms, including leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use that are recognized by such States,

"Option 1

"(i) Recalling that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit States Parties to enacting legislation or regulations pertaining to firearms ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

"Option 2

"(i) Recognizing also that States Parties have their respective domestic laws and regulations pertaining to firearms ownership, possession or trade of a wholly

domestic character and that States Parties will apply their respective laws and regulations in a manner consistent with this Protocol,

"[*(i)* bis *Reaffirming* the principles of sovereignty, non-intervention and the juridical equality of States,]

"Have agreed as follows:"

Notes by the Secretariat

2. At its seventh session, the Ad Hoc Committee decided to remove references to "explosives" from the draft protocol, having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

3. The text of the preamble contained in document A/AC.254/4/Add.2/Rev.4 remained virtually unchanged in the subsequent drafts of the protocol (A/AC.254/4/Add.2/Revs.5 and 6). The only amendment was to replace the words "other related materials" with the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

Twelfth session: 26 February-2 March 2001

Colombia and Mexico (A/AC.254/L.276)

Amendment to the preamble of the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime[15]

"Preamble

"The States Parties to the present Protocol,

"*Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State, region and the world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace, as well as the destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of inter-state conflict,

"*Convinced* that combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition requires international cooperation, the exchange of information and other appropriate measures at the national, regional and global levels,

[15]This proposal was discussed informally by the Ad Hoc Committee on 26 February 2001.

"*Considering* the urgent need for all States, especially States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,"[16]

"*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

"*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition will be useful in preventing and combating those crimes,

"Have agreed as follows:"

Rolling text (A/AC.254/L.281)

Amendments to the proposals made by the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime at its eleventh session

The Chairman of the Ad Hoc Committee proposed that the existing text of the preamble should be replaced with the following:

"The States Parties to the present Protocol,

"*Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State, region and the world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace, as well as the destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of inter-state conflict,

"*Convinced* that combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition requires international cooperation, the exchange of information and other appropriate measures at the national, regional and global levels,

"*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

[16]Addition proposed by Egypt during the preliminary informal discussion of the proposal.

"*Recalling also* General Assembly resolutions 54/54 V of 15 December 1999, entitled "Small arms", in which the Assembly, inter alia, reaffirmed the inherent right to individual or collective self-defence recognized in article 51 of the Charter of the United Nations, which implied that States also had the right to acquire arms with which to defend themselves, as well as the right of self-determination of all peoples, in particular, peoples under colonial or other forms of alien domination or foreign occupation, and the importance of the effective realization of that right, as enunciated, inter alia, in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, and 55/33 Q of 20 November 2000, entitled "Illicit traffic in small arms and light weapons",

"*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition will be useful in preventing and combating those crimes,

"Have agreed as follows:"

Notes by the Secretariat

4. At its twelfth session, the Ad Hoc Committee considered, finalized and approved the preamble of the draft Protocol, as amended. Former article O of the draft Protocol was moved, as amended, to the preamble (see also note 7 by the Secretariat in the chapter on deleted articles below). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

5. It should be noted that the representative of Argentina reserved his Government's position on including in the preamble of the draft protocol a reference to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). The inclusion of that reference entailed a partial redefinition of the scope and extent of the principle of self-determination of peoples, which had been the subject of other resolutions of the Assembly, such as resolution 1514 (XV) of 14 December 1960. Furthermore, he was of the view that it was not appropriate to include such a reference in an international instrument whose principal objective was to fight the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. He stated that the Government of Argentina reserved its right to reiterate its position when the matter was considered by the Assembly or at the time of signature or ratification of the protocol.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to the Protocol,

Aware of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State, region and world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

Convinced, therefore, of the necessity for all States to take all appropriate measures to this end, including international cooperation and other measures at the regional and global levels,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

Bearing in mind the principle of equal rights and self-determination of peoples, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[17]

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition will be useful in preventing and combating those crimes,

Have agreed as follows:

[17]Resolution 2625 (XXV), annex.

General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article I
"Relationship with the United Nations Convention against Transnational Organized Crime

"This Protocol supplements the United Nations Convention against Transnational Organized Crime, done at [...] (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument."

Third session: 28 April-3 May 1999

Notes by the Secretariat

1. Delegations based their comments on the text of article 1 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.1, which was the same as that contained in document A/AC.254/4/Add.2.

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article I
"Relationship with the United Nations Convention against Transnational Organized Crime[1]

"1. This Protocol supplements[2] the United Nations Convention against Transnational Organized Crime, done at [...] (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

"2. With a view to combating the illegal activities carried out by criminal organizations in the areas of the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, as well as their use for the purpose of facilitating their unlawful enterprises, the purpose of this Protocol is:

"*(a)* To promote and facilitate cooperation among States Parties to the Protocol with respect to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

"*(b)* To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials."[3]

Notes by the Secretariat

2. The version of article 1 contained in document A/AC.254/4/Add.2/Rev.2 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.3 and 4).

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[1]There was an extensive discussion on the relationship between the convention and the protocols. The majority of the delegations, including Canada, China, Ecuador, Pakistan and the Sudan, supported the view that the protocol should be not mandatory but optional for the States parties to the convention. Sweden noted that the status of the relation of the protocols with the convention might be either subordinate or complementary. Some delegations, including Australia (see A/AC.254/L.9), France and Poland, expressed the view that a State party to the protocol must be a State party to the convention. Poland proposed to include in article 26 of the convention a provision similar to that contained in article 4 of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (United Nations, *Treaty Series*, vol. 1342, No. 22495). Some delegations, however, including Belgium, Croatia and Mexico, expressed the view that States should have a more flexible choice in deciding to become parties to the convention and/or the protocols. The majority of the delegations, including Austria, Ecuador, France, Poland and the Sudan, also supported the view that the protocols should be considered additions to and extensions of the convention, not independent treaties, and that the consistency in the basic principles between the convention and the protocols should be maintained. See also article 37 of the convention in part one.

[2]South Africa expressed its concern that referring to the protocol as a "supplement" to the convention would diminish the importance of the protocol; it suggested that the article could simply read "This Protocol to the Convention ..." (see A/AC.254/5/Add.5).

[3]Addition proposed by France (see A/AC.254/L.21).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 1
"Relationship with the United Nations Convention against Transnational Organized Crime[4]

"This Protocol supplements the United Nations Convention against Transnational Organized Crime, done at [...] (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

"[*Paragraph 2 has been deleted*]"[5]

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 1
"Relation with the United Nations Convention against Transnational Organized Crime[6]

"1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

"2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol, unless otherwise provided herein.

"3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention."

Notes by the Secretariat

3. Article 1 was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

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[4]As indicated above, the question of the relationship between the convention and the protocols was discussed extensively by the Ad Hoc Committee in the negotiations on the convention itself. Already at its sixth session, the Ad Hoc Committee had agreed that common subject matter should be dealt with in one of three ways: by incorporating appropriate articles of the convention into each protocol mutatis mutandis; by providing supplementary or more specific terms in the protocols modifying the applicable provisions of the convention; or by incorporating parallel provisions into both instruments in their entirety. The details of specific provisions and the question of whether the relationship should be set out in the text of the convention or in each protocol were left open to further discussion (see article 37 of the convention in part one; the note by the Secretariat on the common provisions (A/AC.254/21); the report of the Chairman on the informal consultations held during the sixth session concerning the common provisions (A/AC.254/L.109); and the report of the Ad Hoc Committee on its sixth session (see A/AC.254/23 and Corr.1, paras. 17 and 18)).

[5]The informal consultations held during the eighth session of the Ad Hoc Committee recommended the deletion of article 1, paragraph 2, after adopting similar text in article 3 proposed by France and Italy (see A/AC.254/L.172).

[6]At the eleventh session of the Ad Hoc Committee, article 1 of the draft protocol was finalized with the following note to be inserted in the *travaux préparatoires:* "This paragraph was adopted on the understanding that the words 'mutatis mutandis' meant 'with such modifications as circumstances require' or 'with the necessary modifications'. Provisions of the convention that are applied to the protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the protocol as in the convention." (See below under section C.)

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

I. General provisions

Article 1
Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

C. Interpretative note

The interpretative note on article 1 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its twelfth session (see A/55/383/Add.3, para. 2) is as follows:

Paragraph 2

This paragraph was adopted on the understanding that the words "mutatis mutandis" meant "with such modifications as circumstances require" or "with the necessary modifications". Provisions of the convention that are applied to the protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the protocol as in the convention.

Article 2. Statement of purpose

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article III
"Purpose

"The purpose of this Protocol is to promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials."

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article III
"Purpose[1]

"The purpose of this Protocol is:

"*(a)* To promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][2] and other related materials;

"Option 1

"[*(b)* To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.][3]

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[1]The Syrian Arab Republic expressed the view that the purpose should be mentioned in the preamble, not in the article. However, a majority of delegations, including those of Algeria, Colombia, Croatia, France, Italy, Malta, Morocco, Pakistan, the Republic of Korea, Senegal, Tunisia, Turkey and Zambia, proposed to merge article III with article I, since both articles dealt with the relationship between the protocol and the convention, and the purpose of the protocol should be placed at the beginning of the operative paragraphs. South Africa suggested that the outcome of the protocol, to combat and prevent the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, should be added in this article (see A/AC.254/5/Add.5).

[2]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[3]Addition proposed by the United States (see A/AC.254/5/Add.1 and Corr.1), supported by Ecuador, Italy, New Zealand, the Republic of Korea, Switzerland and Turkey. South Africa suggested adding the words "combating and preventing illicit manufacturing of and trafficking in firearms, ammunition and other related materials" (see A/AC.254/5/Add.5).

"Option 2[4]

"*(b)* To promote and facilitate cooperation and exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials."[5]

Fifth session: 4-15 October 1999

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article III
"Purpose[6]

"The purpose of this Protocol is:

"*(a)* To promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, [their parts and components and][7] ammunition [, explosives] [and other related materials][8, 9]

"Option 1

"*(b)* To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

"Option 2

"*(b)* To promote and facilitate cooperation and exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials."[10]

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[4]Addition proposed by Japan and Mexico (see A/AC.254/5/Add.1 and Corr.1), supported by Senegal.

[5]Inclusion of cooperation among States in the purpose provision was supported by France, which noted that the purpose of such cooperation should not go beyond combating transnational organized crime into the area of disarmament and arms control.

[6]At the fifth session of the Ad Hoc Committee, some delegations suggested that the subject of article 1, paragraph 2, including subparagraphs 2 *(a)* and *(b)*, dealt with the purpose of the draft protocol rather than its relationship with the draft convention, and should therefore be moved to article 3. There was some support for a revised text of article 3 based on this suggestion and a compromise between the options already proposed. (Mexico and the United States proposed a text that was translated and distributed at the sixth session of the Ad Hoc Committee.) Since this provision was closely related to article 1 of the draft protocol and several provisions of the draft convention, it was decided that further discussion should be deferred until the unsettled issues in those provisions had been resolved.

[7]Addition proposed by Japan (see A/AC.254/L.22). See footnote 12 concerning the preamble to the present protocol.

[8]Deletion proposed by Japan (A/AC.254/L.22). See footnote 13 concerning the preamble to the present protocol.

[9]The United States proposed that the text of this paragraph should be deleted and replaced with the text presently in article 1, paragraph 2.

[10]At the fifth session of the Ad Hoc Committee, the Syrian Arab Republic proposed inserting the words "in the context of transnational organized crime" at the end of this paragraph (see A/AC.254/L.67).

Notes by the Secretariat

1. The text of article 3 contained in document A/AC.254/4/Add.2/Rev.2 remained virtually unchanged in the intermediate draft of the protocol contained in document A/AC.254/4/Add.2/Rev.3. The only amendment was to place the word "explosives" and the words "other related materials" in option 2 of subparagraph *(b)* in square brackets, in order to ensure consistency with the wording in subparagraph *(a)* (see also footnote 8 above).

2. The text of article 3 contained in document A/AC.254/4/Add.2/Rev.2 also remained virtually unchanged in the intermediate draft of the protocol contained in document A/AC.254/4/Add.2/Rev.4. The only difference was the deletion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 3
"Purpose[11]

"The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components[12] and ammunition."

Notes by the Secretariat

3. At the eleventh session of the Ad Hoc Committee, there was general agreement that the text of this article should be reformulated, for the sake of consistency with the other protocols, on the basis of a proposal by Mexico, which read as follows:

"The purpose of this Protocol is to promote cooperation among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition."

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[11]This was new text proposed by France and Italy at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.172). A substantial majority of the delegations that took part in the discussion expressed support for the proposed text and the informal consultations decided to recommend that it should be adopted for the purposes of further discussion. Pakistan also supported the text, but proposed deleting the words "in order" and adding the words "with a view to fighting transnational organized crime" at the end of the sentence. This proposal was supported by only two other delegations and the informal consultations did not recommend either that it should be placed in square brackets or that it should be added to the text. The strong objections of Pakistan were noted for the record. China and Pakistan reserved the right to return to this provision in subsequent discussions.

[12]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

Two delegations reiterated their position that the language of this article should limit the purpose of the protocol to preventing, combating and eradicating trafficking that was linked in some way to transnational organized crime, unless that linkage was established in article 4 (Scope) instead. As a result, final approval of the amended provision was deferred pending the finalization of article 4. Subsequently, the proposal of Mexico was withdrawn and discussions focused on the original text, which was further considered during the eleventh session of the Ad Hoc Committee. The article was finalized without further amendment and approved by the Ad Hoc Committee at its twelfth session (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 2
Statement of purpose

The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

Article 3. Use of terms

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article II
"Definitions

"For the purpose of this Protocol, the following definitions shall apply:

"*(a)* 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm;

"*(b)* 'Controlled delivery': the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences referred to in article V of this Protocol;

"*(c)* 'Firearm': any barrelled weapon that will be or is designed or may be readily converted to expel a bullet or projectile by the action of an explosive, including any frame or receiver of such a barrelled weapon but not including any antique firearm manufactured before the twentieth century or its replicas;

"*(d)* 'Illicit manufacturing': the manufacturing or assembly of firearms, ammunition and other related materials:

"(i) From components or parts illicitly trafficked; or

"(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacturing;

"*(e)* 'Illicit trafficking': the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it;

"*(f)* 'Other related materials': any components, parts or replacement parts of a firearm that are essential to its operation or accessories that can be attached to a firearm and that enhance its lethality."

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article II
"Definitions[1]

"For the purpose of this Protocol, the following definitions shall apply:

"*(a)* 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm [provided those components are themselves subject to authorization in the respective State Party];[2]

"[*(b)* 'Controlled delivery': the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substance substituted for them][3] to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to identifying persons involved in the commission of offences referred to in article V of this Protocol;][4]

"Option 1

"*(c)* 'Firearm':

"(i) Any barrelled weapon that will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, [including any frame or receiver of such a barrelled weapon but][5] not including any antique firearm manufactured before the twentieth century or its replicas [in accordance with domestic law][3];

"[(ii) Any other weapon or destructive device such as an explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];[6]

"Option 2

"*(c)* 'Firearm': any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, excluding air weapons and antique firearms that are not subject to authorization in the respective State Party;[7]

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[1]Some delegations, including Australia, Belgium, Croatia and the Republic of Korea, proposed that the definitions in this article should be in a logical order rather than in alphabetical order.

[2]Addition proposed by the United Kingdom of Great Britain and Northern Ireland (see A/AC.254/5/Add.1 and Corr.1), supported by New Zealand.

[3]Addition proposed by Japan (see A/AC.254/5/Add.1 and Corr.1).

[4]Some delegations, including Mexico, proposed the deletion of this subparagraph (see A/AC.254/5/Add.1 and Corr.1). One delegation expressed its reservation on this definition until the related articles in the convention were discussed. One delegation was of the view that the definition should be included in the convention if not in the protocol. One delegation stated that this paragraph would encounter problems of a constitutional nature in its country.

[5]Deletion proposed by the United States.

[6]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1) and the United States, supported by some other delegations, including Belgium, Egypt, Italy, New Zealand, South Africa, Turkey and Zambia. Those delegations were of the view that those weapons were in fact illicitly trafficked and used by organized criminals and that limiting the application of the protocol would lower the practicality and effectiveness of the protocol as an instrument to combat transnational organized crime. Belgium also suggested that a safeguard clause with regard to the international humanitarian rules should be included in the protocol or in the convention. Some delegations, including Australia, Germany, Japan, Norway, Paraguay, the Russian Federation and Spain, were against the expansion of the definition of firearms to include the items outlined in the proposal of Mexico and the United States. The United Kingdom suggested two aspects for testing the validity of the definition of firearms in the protocol: whether it focused on "international" problems; and whether it matched the purpose of the protocol, namely to combat transnational organized crime. New Zealand suggested the inclusion of certain weapons that performed like those using modern technologies. That delegation also expressed the view that the definition of "antique firearms" needed further refinement.

[7]Alternative proposed by the United Kingdom (see A/AC.254/5/Add.1 and Corr.1).

"*(d)* 'Illicit manufacturing': the manufacturing or assembly of firearms, ammunition [, explosives][8] and other related materials:

"(i) From components or parts illicitly trafficked; or

"Option 1

"(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

"Option 2

"(ii) Without an appropriate authority from the State Party where the manufacture or assembly takes place; or[9]

"(iii) Without marking the firearms at the time of manufacturing;

"*(e)* 'Illicit trafficking':[10]

"(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition [, explosives][8] and other related materials from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it;

"[(ii) The import of firearms without marking at the time of importation;

"(iii) The obliteration, removal or alteration of the serial number on a firearm.][11]

"*(f)* 'Other related materials': any components, parts or replacement parts of a firearm [that are essential to its operation][12] [or accessories][13] [that can be attached to a firearm][14] [and that enhance its lethality].[15]

"[(...) 'Tracing': the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership.][3]

"[(...) 'Explosives': any substances or article that is made, manufactured or used to produce an explosion, detonation or propulsive or pyrotechnic effect, except:

"(i) Substances and articles that are not in and of themselves explosives; or

"(ii) Substances and articles listed in the annex to this Protocol.]"[16]

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[8]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[9]Suggested by the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

[10]Some delegations, including Pakistan, Qatar, the Sudan and the Syrian Arab Republic, expressed concern that the definition of "illicit trafficking" might violate the principle of the Charter of the United Nations regarding respect for equal rights and the self-determination of peoples and the inherent right of individual or collective self-defence if an armed attack occurred.

[11]Addition proposed by the United States (see A/AC.254/5/Add.1 and Corr.1), supported by Portugal and South Africa (see A/AC.254/5/Add.5). The Republic of Korea suggested that criminalization of those acts should be dealt with in article V.

[12]Deletion proposed by Mexico, South Africa (see A/AC.254/5/Add.5), the United Kingdom and the United States (see A/AC.254/5/Add.1 and Corr.1), supported by New Zealand.

[13]Deletion proposed by the United States (see A/AC.254/5/Add.1 and Corr.1), supported by New Zealand.

[14]Deletion proposed by Mexico and the United States (see A/AC.254/5/Add.1 and Corr.1), supported by New Zealand.

[15]Deletion proposed by Mexico, South Africa (see A/AC.254/5/Add.5) and the United States (see A/AC.254/5/Add.1 and Corr.1), supported by New Zealand.

[16]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1). There was a discussion on the inclusion of explosives. Some delegations, including Austria, France, Germany, Norway, Pakistan, Spain, the Russian Federation, the Sudan, Sweden and the United States, expressed their opposition to that inclusion. Other delegations, including Algeria, Colombia, Ecuador and Italy, supported the inclusion of explosives in the protocol.

Mexico (A/AC.254/5/Add.1 and Corr. 1)

Mexico proposed that the term "explosives" should be clarified in an annex to the protocol, to read as follows:

> "The term 'explosives' does not include: compressed gases; flammable liquids; explosive-activated devices, such as air bags and fire extinguishers; propellant-activated devices, such as nail-gun cartridges; consumer fireworks that are suitable for use by the public and designed primarily to produce visible or audible effects by combustion, that contain pyrotechnic compositions and that do not project or disperse dangerous fragments such as metal, glass or brittle plastic; toy plastic or paper caps for toy pistols; toy propellant devices consisting of small paper or composition tubes or containers containing a small charge or slow-burning propellant powder designed so that they will neither burst nor produce external flame except through the nozzle on functioning; and smoke candles, smoke pots, smoke grenades, smoke signals, signal flares, hand signal devices and Very signal cartridges designed to produce visible effects for signal purposes and containing smoke components and no bursting charges."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article II
"Definitions

"For the purpose of this Protocol, the following definitions shall apply:

"*(a)* 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm [provided those components are themselves subject to authorization in the respective State Party];

"[*(b)* 'Controlled delivery': the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substance substituted for them] to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to identifying persons involved in the commission of offences referred to in article V of this Protocol;]

"Option 1

"*(c)* 'Firearm':

"(i) Any barrelled weapon that will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, [including any frame or receiver of such a barrelled weapon but] not including any antique firearm manufactured before the twentieth century or its replicas [in accordance with domestic law];

"[(ii) Any other weapon or destructive device such as an explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];

"Option 2

"*(c)* 'Firearm': any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, excluding air weapons and antique firearms that are not subject to authorization in the respective State Party;

"Option 3[17]

"*(c)* 'Firearm': any portable weapon that will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, but not including any weapons that are designated antique firearms or replicas of such firearms as defined in accordance with the laws and regulations of each State Party;

"*(d)* 'Illicit manufacturing': the manufacturing or assembly of firearms, ammunition [, explosives] and other related materials:

"(i) From components or parts illicitly trafficked; or

"Option 1

"(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

"Option 2

"(ii) Without an appropriate authority from the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacturing;

"*(e)* 'Illicit trafficking':

"(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition [, explosives] and other related materials from or across the territory of one State Party to that of another State Party [if any one of the States Parties concerned does not authorize it];[18]

"[(ii) The import of firearms without marking at the time of importation;

"(iii) The obliteration, removal or alteration of the serial number on a firearm.]

"Option 1

"*(f)* 'Other related materials': any components, parts or replacement parts of a firearm [that are essential to its operation] [or accessories] [that can be attached to a firearm] [and that enhance its lethality].

"Option 2[19]

"*(f)* 'Parts and components': any elements of a firearm that are essential to its operation, such as a barrel, frame, cylinder or slide.

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[17]Alternative proposed by Japan (see A/AC.254/L.22).

[18]Sweden noted the need to clarify the meaning of the words in square brackets (see A/AC.254/5/Add.5).

[19]Japan proposed that, throughout the protocol, the words "ammunition [, explosives] and other related materials" should be replaced with the words "their parts and components and ammunition", so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolution 53/111. In line with that proposal, Japan proposed that the definition of "other related materials" should be replaced with that of "parts and components" (see A/AC.254/L.22).

"[*(f)* bis 'Tracing': the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership.]

"[*(f)* ter 'Explosives': any substances or articles that are made, manufactured or used to produce an explosion, detonation or propulsive or pyrotechnic effect, except:

"(i) Substances and articles that are not in and of themselves explosives; or

"(ii) Substances and articles listed in the annex to this Protocol.]"

Fifth session: 4-15 October 1999

Notes by the Secretariat

1. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of the Ad Hoc Committee, extensive discussion took place on article 2 (Definitions) of the draft protocol. The deliberations of the Technical Session are reflected in the report of the Chairman (see A/AC.254/L.86). The arguments that received support concerning each term were as follows:

Ammunition. The definition of ammunition was broadly supported. One participant stated that the definition was too broad.

Controlled delivery. Two participants suggested that discussion of the term "controlled delivery" should be deferred until the subject had been dealt with in the discussion on the revised draft convention.

Firearm. One participant proposed a new definition of the term "firearm". There were no technical issues raised that would require new options for the definition of "firearm". Participants discussed the technical viability of existing options; most participants supported option 1, subparagraph *(c)* (i). Some participants suggested that the items listed in that subparagraph were illicitly trafficked, while others noted that those items should not be included in the draft protocol since they were under the control of different legal regimes to that of firearms. Some participants favoured a broad definition of the term "firearm" for the purposes of law enforcement cooperation. With respect to the terms "portability" and "lethality", some participants cautioned that those terms required a value judgement to be made and might therefore present challenges for law enforcement. Concerning the term "antique firearm", some participants suggested that a more precise definition was needed to prevent illicit trafficking in those items. Some participants proposed excluding the word "barrelled" from the definition of "firearm", to allow for more flexibility. Some participants suggested excluding military firearms from the definition, since civilian possession of such firearms was already prohibited under their domestic law. One participant noted that military firearms often found their way into criminal hands. Another suggested that it would be more appropriate to deal with the issue under discussions concerning the scope of application of the protocol. On the issue of airguns, one participant noted that some were of concern because they were readily convertible.

Illicit manufacturing. The discussion focused mainly on the difference in the wording of the two options under subparagraph *(d)* (ii). To some participants, the difference between the two options was not clear. One participant suggested that the words "appropriate authority" provided more flexibility than the words "competent government authority". One participant suggested adding the word "conversion" after the word "manufacturing".

Illicit trafficking. One participant proposed that the words in square brackets at the end of subparagraph *(e)* (i) should be retained.

Other related materials and parts and components. Many participants supported the inclusion of the phrase "parts and components" because it was consistent with the relevant Economic and Social Council and General Assembly resolutions. Some participants suggested deleting the phrase "barrel, frame, cylinder or slide" in option 2 of subparagraph *(f)*. On the issue of accessories, one delegation expressed concern about excluding accessories because they could be used to convert a legitimate sporting gun into something more dangerous.

Tracing. Although there were no objections to the definition of "tracing", one participant suggested deleting the phrase "establishing stolen status and proving ownership". Another participant suggested adding the word "ammunition" after the word "firearms". One participant suggested adding, at the end of subparagraph *(f)* bis, an order to analyse and monitor illegal trafficking.

Explosives. One participant suggested retaining the subparagraph on explosives. Following comments made by many other participants about the appropriateness of the proposal, the Chairman suggested that the topic should be dealt with by the Ad Hoc Committee, because the mandate to negotiate the proposal did not include explosives.

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 2
"Definitions

"For the purpose of this Protocol, the following definitions shall apply:

"*(a)* 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm [provided that those components are themselves subject to authorization in the respective State Party];[20]

"[*(b)* 'Controlled delivery': the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substance substituted for them] to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to identifying persons involved in the commission of offences referred to in article 5 of this Protocol;]

"*(c)* 'Firearm':[21]

[20]At the fifth session of the Ad Hoc Committee, some delegations proposed to delete the text to ensure consistency in the definition at the international level, while some others sought to retain it in order to preserve flexibility at the national level.

[21]The discussion at the fifth session focused on whether the term "firearm" should be defined broadly or narrowly, in the context of three options then before the Ad Hoc Committee: option 1 (original text as previously modified); option 2 (proposed by the United Kingdom, see A/AC.254/5/Add.1 and Corr.1); and option 3 (proposed by Japan, see A/AC.254/L.22). Many delegations supported wording that incorporated elements of all three of the options under discussion. The major issues were as follows: whether it was appropriate, for reasons related to policy and to the mandate of the Ad Hoc Committee, to include other weapons or destructive devices as proposed in subparagraph *(c)* (ii) of this article (see below); whether the definition should be limited to "portable" or "person-portable" weapons; and whether the reference to antique firearms should include a reference to national law or should simply refer to the date of manufacture. The Netherlands proposed to define the term broadly and to limit the application of certain provisions to "portable" firearms (see A/AC.254/L.70). It was agreed that a unified text would be prepared and that the language pertaining to unsettled issues would be placed in square brackets. The text of subparagraph *(c)* (i) of this article combines this unified text with proposals made during the fifth session of the Ad Hoc Committee.

"(i) Any [portable][22] [lethal][23] barrelled weapon that will be or is designed to or may be readily converted to expel a shot, bullet, other missile[24] or projectile [by the action of an explosive],[25] [including any frame or receiver of such a weapon] [excluding air weapons][5] excluding antique firearms manufactured before the twentieth century or [their][26] replicas [that are not subject to authorization in the State Party concerned];[27] and

"[(ii) Any [other weapon or destructive device such as][28] an explosive, incendiary [bomb][29] or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];[30]

"*(d)* 'Illicit manufacturing': the manufacturing or assembly of firearms, [their parts and components,] ammunition [, explosives] and other related materials:

"(i) From components or parts illicitly trafficked;

"(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place;[31] or

"(iii) Without marking the firearms at the time of manufacturing;[32]

"*(e)* 'Illicit trafficking':[33]

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[22]Several delegations proposed the inclusion of the word "portable" in order to clarify that larger barrelled weapons were not included. For further clarity, some delegations also suggested including the words "person- portable" to clarify that weapons transportable by vehicle were also not included. Some delegations expressed concern about vagueness or uncertainty in determining portability.

[23]Some delegations expressed concern about vagueness or uncertainty in determining lethality.

[24]One delegation expressed concern about the use of the word "missile", which could refer to either rockets or projectiles in general.

[25]This wording was taken from previous options 1 and 3 of subparagraph *(c)* (see A/AC.254/4/Add.2/Rev.2).

[26]The effect of including the word "their" would be to refer to replicas of antique firearms, which might otherwise be real firearms according to the definition of the term, instead of referring to replicas of firearms, which would not be real firearms.

[27]This text combines the wording used in previous options 2 and 3 of subparagraph *(c)* (see A/AC.254/4/Add.2/Rev.2). The alternative was the phrase "in accordance with domestic law", proposed by Japan (see A/AC.254/5/Add.1 and Corr.1). At the fifth session of the Ad Hoc Committee, one delegation sought clarification as to whether the phrase "in accordance with domestic law" would apply to replicas only or to antiques and (their) replicas.

[28]Some of the delegations that supported the inclusion of subparagraph *(c)* (ii) of this article were of the view that the phrase "Any other weapon or destructive device" was too broad. The United States, supported by several other delegations, proposed that it should be deleted, leaving only the list. Mexico proposed that it should be placed in square brackets.

[29]This wording, proposed by the United States, would be inserted if the phrase "Any weapon or destructive device" was deleted.

[30]This addition was proposed, as indicated above, by Mexico (see A/AC.254/5/Add.1 and Corr.1) and the United States. Views were divided on whether subparagraph *(c)* (ii) of this article should be included or not. The delegations supporting its inclusion favoured a broad definition, as it would be conducive to the control of such trafficking, and noted that, while some of the listed devices were more likely to be used in armed conflicts or by terrorists, they were still likely to be trafficked by persons engaged in transnational organized crime. The delegations that opposed the provision raised several arguments. In their view, it was not appropriate to define as "firearms" items that were not commonly recognized as such or included as such in domestic laws or other texts. They also argued that such a broad definition could be seen as an attempt to expand the mandate given to the Ad Hoc Committee and that controls on the items listed were more appropriate in instruments on arms control than in an instrument on crime control. Norway proposed a compromise that consisted of excluding these items from the definition of "firearm" and including them directly in article 5, on the provisions on criminalization. Several delegations noted that inclusion of these items might require changes to article 9, since some of them could not be marked in the same way as firearms.

[31]This compromise text, prepared by the United Kingdom based on previous options, was supported by other delegations. At its fifth session, the Ad Hoc Committee agreed to use this text as the basis for future discussion.

[32]China proposed adding the words "duplicate or false marking" to this provision in order to include cases where firearms were marked at manufacture, but in a manner that would intentionally defeat or resist subsequent efforts to trace them.

[33]The revised text of this provision was proposed by Switzerland at the fifth session of the Ad Hoc Committee. This new text was also meant to replace the text of previous subparagraph *(c)* (ii). Pakistan proposed that the definition of "illicit trafficking" should be limited to the activities described only when they were engaged in by a transnational organized criminal group. Other delegations opposed that proposal on the grounds that it would limit the effectiveness of many of the measures, since the nature of the group would have to be determined before the provisions of the protocol could be employed in investigating it. One delegation pointed out that activities such as illicit manufacturing or marking might be carried out by individuals and later taken advantage of by an organized criminal group, leaving no basis for applying the protocol to those activities.

"(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, [parts and components,][34] ammunition [, explosives] and [other related materials] from or across the territory of one State Party to that of another State Party

"Option 1

"if the firearms are not marked in accordance with article 9 of this Protocol or if the transaction is not licensed or authorized in accordance with article 11 of this Protocol

"Option 2

"[if any one of the States Parties concerned has not legally authorized it][35]

"Option 3

"[if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol][36]

"Option 4

"[without the authorization of or in violation of the legislation or regulations of either of the States Parties concerned;][37]

"[, or the brokering of such activities];[38]

"[(ii) The import of firearms without marking at the time of importation;]

"[(iii) The obliteration, removal or alteration of the serial number[39] on a firearm.[40]][41]

"Option 1

"*(f)* 'Other related materials':[42] any components, parts or replacement parts of a firearm [that are essential to its operation] [or accessories][43] [that can be attached to a firearm] [and that enhance its lethality].[44]

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[34]Pakistan proposed that these words should be added to make this provision consistent with the mandate of the Ad Hoc Committee (General Assembly resolution 53/111) and that the words "other related materials" should be deleted.

[35]Proposed by Venezuela at the fifth session of the Ad Hoc Committee.

[36]This proposal was made by the United States.

[37]Proposed by France at the fifth session of the Ad Hoc Committee.

[38]Proposed by Sweden at the fifth session of the Ad Hoc Committee.

[39]At the fifth session of the Ad Hoc Committee, India proposed adding the word "marking" after the words "serial number".

[40]At the fifth session of the Ad Hoc Committee, India proposed to insert the words "before, during or after importation or exportation" at the end of this subparagraph.

[41]Botswana, France and the Republic of Korea suggested that criminalization of these acts should be dealt with in article 5 instead of in the definition of illicit trafficking. India suggested that this provision should be kept as part of the definition and proposed changes to link it more closely with import and export activity.

[42]At the fifth session of the Ad Hoc Committee, there was extensive discussion of whether this article should include a definition of "other related materials" or "parts and components". A majority of delegations favoured a definition of "parts and components" because that phrase most closely reflected the mandate of the Ad Hoc Committee (General Assembly resolution 53/111), but there was a range of views with respect to the balance of the definition. Most delegations sought more general wording to ensure that all of the major parts of firearms would be included but that minor parts would not be included. Delegations were asked to propose a compromise on the definition of "parts and components" at the subsequent session of the Ad Hoc Committee at which the draft protocol would be discussed.

[43]Delegations were generally in favour of considering the term "accessories" as including items such as silencers, which though not parts or components and not "essential" to the operation of a firearm, were nevertheless of concern in dealing with organized crime. Most agreed that this issue needed to be dealt with, but many were concerned that the term "accessories" was too broad.

[44]The United States noted that the use of this criterion would exclude some components or accessories such as silencers, which were of concern in the context of transnational organized crime but did not enhance lethality.

"Option 2

"*(f)* 'Parts and components': any elements of a firearm [that are essential to its operation,][45] [such as] [including][46] a barrel, frame, cylinder or slide.

"[*(f)* bis 'Tracing':[47] the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership.][48]

"[*(f)* ter 'Explosives': any substances or articles that are made, manufactured or used to produce an explosion, detonation or propulsive or pyrotechnic effect, except:

"(i) Substances and articles that are not in and of themselves explosives; or

"(ii) Substances and articles listed in the annex to this Protocol.]"[49]

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.2/Rev.4)

"Article 2
"Definitions[50]

"For the purpose of this Protocol, the following definitions shall apply:

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[45]At the fifth session of the Ad Hoc Committee, some delegations were of the view that these words were too vague, since even some minor components that were not unique to a firearm were "essential" to its operation and some major components, such as the stock, were not. This question was linked to the "illustrative list" that followed. Some delegations were of the opinion that the list was too restrictive, while others felt that it provided an appropriate clarification, excluding minor but "essential" parts. The United States proposed that the test for inclusion should not be whether the parts were "essential" or whether they contributed to lethality, but whether they were unique to firearms or identifiable as firearm components or parts. Italy proposed inserting the words "the operation of that firearm or any other firearm".

[46]Proposal submitted by Singapore at the fifth session of the Ad Hoc Committee.

[47]During the fifth session of the Ad Hoc Committee, there was extensive discussion of the term "tracing". Some delegations saw tracing as a term of art referring to the tracing of specific firearms from place to place or from owner to owner using the unique serial number or other markings on the firearm and records of transfers. Other delegations saw the term as a more general reference to technical or investigative assistance. These delegations sought to extend the definition to include the tracing of parts, components and ammunition. Some delegations, however, saw this as requiring additional marking and record-keeping, which, in their view, was impracticable. Some other delegations felt that it was not necessary to define the term "tracing".

[48]At the fifth session of the Ad Hoc Committee, the United States expressed concern about any provision that would require tracing of firearms for purposes other than assisting in criminal investigations. Italy submitted the following proposal related to a reformulation of the definition of "tracing" (see A/AC.254/L.95):

> "(f *bis*) 'Tracing': the systematic tracking of firearms [and ammunition] from manufacturer to purchaser for the purpose of assisting law enforcement authorities of States Parties [and relevant intergovernmental organizations] in analysing and monitoring illicit trafficking, as well as aiding competent national authorities in identifying suspects involved in criminal violations."

Some delegations wanted wording that would limit tracing to illicitly manufactured or trafficked firearms, but others pointed out that the legal status of a firearm would not generally be known until or unless it had been traced.

[49]At the fifth session of the Ad Hoc Committee, there was extensive discussion on whether the protocol should deal with explosives or not. The majority of delegations opposed any provisions dealing with explosives in the protocol on the basis that it would be impracticable on technical grounds and that it would go beyond the mandate given to the Ad Hoc Committee by the General Assembly in its resolutions 53/111 and 53/114. Several delegations wanted the references to explosives to be kept in the text, however, until the status of the mandate and the possibility of a separate protocol were clarified. Pursuant to a proposal of the United Kingdom, the Ad Hoc Committee requested the Secretariat to obtain a legal opinion about the scope of the mandate in Assembly resolutions 53/111 and 53/114 and the scope of the mandate in the draft resolution contained in document A/C.3/54/L.5, on which the Assembly was expected to take action shortly thereafter.

[50]At the seventh session of the Ad Hoc Committee, one delegation suggested that the definitions should be placed in the order in which the terms defined appeared in the text of the draft protocol. Excluding references in the preamble and the definitions themselves, this would result in the following order: firearm (art. 1); ammunition (art. 1); parts and components and/or other related materials (art. 1); illicit manufacturing (art. 3, para.*(a)*); illicit trafficking (art. 5, para.*(a)*); and tracing (art. 8). One defined term, controlled delivery, was not used anywhere in the draft protocol.

"*(a)* 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm [provided that those components are themselves subject to authorization in the respective State Party];[51]

"[*(b)* 'Controlled delivery': the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substances substituted for them] to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to identifying persons involved in the commission of offences referred to in article 5 of this Protocol;][52]

"*(c)* 'Firearm':

"(i) Any [portable] [lethal][53] barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive,[54] excluding antique firearms or their replicas.[55] Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after [1870] [1899];[56] and

"[(ii) Any [other weapon or destructive device such as] an explosive bomb, incendiary bomb or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];[57]

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[51]At the seventh session of the Ad Hoc Committee, some delegations proposed to delete the text in square brackets to ensure consistency in the definition at the international level, while others sought to retain it in order to preserve flexibility at the national level. At the seventh session, some delegations proposed deletion of the words "its components, including" in order to limit the scope of components that would be considered "ammunition" to those specifically listed.

[52]At the seventh session of the Ad Hoc Committee, those delegations which supported deleting this definition noted that it was unnecessary, as the term "controlled delivery" was not used anywhere in the draft protocol.

[53]At the seventh session of the Ad Hoc Committee, the United Kingdom explained that the intention in including the word "lethal" was to exclude non-functional items such as replicas and toys; in the United Kingdom, the word was interpreted as meaning capable of causing more than merely superficial injuries, which in forensic terms required more than one "foot-pound" of kinetic energy. Another delegation expressed the view that, taken literally, the word "lethal" meant capable of causing death, which was too high a standard and would exclude too many firearms.

[54]At the seventh session of the Ad Hoc Committee, the Islamic Republic of Iran proposed that the definition of the term "firearm" should be further limited to those weapons treated as firearms in accordance with the practices of law enforcement in each jurisdiction. It proposed the insertion of the words "limited to the law enforcement practices of the States Parties and" at this point in the text.

[55]At the seventh session of the Ad Hoc Committee, China proposed that the words "or their replicas" should be replaced with the words ", their replicas, and large-calibre military arms, weapons or launchers". Discussion ensued in which some delegations favoured size limitations to conform to the commonly accepted definition of the term "firearm" and others preferred more open-ended language. Delegations that supported limitations on size argued that the present wording was vague and that large military weapons were more appropriate for arms control instruments. Those which supported the existing text argued that while very large weapons were unlikely to be used in organized crime, they were sometimes used to attack the police and were frequently the subject of trafficking on behalf of non-criminal users.

[56]At the seventh session of the Ad Hoc Committee, there was discussion on the cut-off date for "antique" firearms. Some delegations were in favour of inserting the year 1899 at this point of the text for convenience and because it would not require States with existing legislative dates up to 1899 to change their existing laws (for example, the proposals submitted by Japan and South Africa, the United Kingdom and the United States, contained in document A/AC.254/5/Add.18). Other delegations preferred inserting the year 1870 here on technological grounds, because that would exclude all automatic and semi-automatic weapons.

[57]At the seventh session of the Ad Hoc Committee, discussion continued on whether subparagraph *(c)* (ii) of article 2 of the draft protocol should be included or not. Some delegations supported its inclusion, regarding it as being necessary for the control of criminal trafficking in the devices in question, even though they were not often used by organized crime. Other delegations opposed this on the basis that it was beyond the mandate of the Ad Hoc Committee to deal with "firearms, their parts and components and ammunition" and that such matters were better left to negotiations and instruments dealing with disarmament matters. The Chairman noted that there was little time left to resolve this question and asked delegations to reflect on the three major options discussed. Those were *(a)* to delete the provision, thus restricting the application of the protocol to "firearms" as defined in subparagraph *(c)* (i), their parts and components and ammunition; *(b)* to retain the provision, extending the application to items listed in it; and *(c)* to adopt the compromise proposed by Norway, in which the items would not be defined in article 2, but would still be criminalized by a provision in article 5. Regarding the third option, some delegations expressed support, while others expressed concern that it would not subject the items to other provisions of the protocol, notably those dealing with marking, record-keeping and cooperation. An alternative compromise, proposed by Turkey, was also considered. It would involve incorporating the items within an expanded definition of the term "ammunition", by including the present definition as subparagraph *(a)* (i), "Cartridge", and moving the provision currently in subparagraph *(c)* (ii), "Any other weapon or destructive device", to a new subparagraph *(a)* (ii) (see A/AC.254/L.151).

"*(d)* 'Illicit manufacturing': the manufacturing or assembly of firearms, [their parts and components,] ammunition and other related materials:

"(i) From components or parts illicitly trafficked;

"(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacturing;

"*(e)* 'Illicit trafficking':

"(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, [parts and components,] ammunition and [other related materials] from or across the territory of one State Party to that of another State Party

"Option 1

"if the firearms are not marked in accordance with article 9 of this Protocol or if the transaction is not licensed or authorized in accordance with article 11 of this Protocol

"Option 2

"[if any one of the States Parties concerned has not legally authorized it]

"Option 3

"[if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol]

"Option 4

"[without the authorization of or in violation of the legislation or regulations of either of the States Parties concerned;]

"[, or the brokering of such activities;]

"[(ii) The import of firearms without marking at the time of importation;]

"[(iii) The obliteration, removal or alteration of the serial number on a firearm].

"Option 1

"*(f)* 'Other related materials': any components, parts or replacement parts of a firearm [that are essential to its operation] [or accessories] [that can be attached to a firearm] [and that enhance its lethality].

"Option 2

"*(f)* 'Parts and components': any elements of a firearm [that are essential to its operation,] [such as] [including] a barrel, frame, cylinder or slide.

"[*(f)* bis 'Tracing': the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in

identifying suspects involved in criminal violations, establishing stolen status and proving ownership.]"[58]

Notes by the Secretariat

2. At the seventh session of the Ad Hoc Committee, discussion resumed on the question of whether the protocol should deal with explosives and whether that was within the mandate given to the Ad Hoc Committee by the General Assembly. The opinion of the Officer-in-Charge of the Office of the Legal Counsel on that matter, requested at the fifth session of the Ad Hoc Committee, was communicated to the Ad Hoc Committee at its seventh session. According to the Office of the Legal Counsel, the mandate of the Ad Hoc Committee to draft an instrument dealing with firearms, their parts and components and ammunition did not include the drafting of provisions on explosives in the protocol; however, once the study on the illicit manufacturing of and trafficking in explosives had been completed by the expert group to be convened pursuant to Assembly resolution 54/127 of 17 December 1999 and once the Secretary-General had submitted the results of the study to the Commission on Crime Prevention and Criminal Justice, the Ad Hoc Committee could consider the possibility of drafting an international instrument on that subject. At its seventh session, following a discussion on the matter, the Ad Hoc Committee decided to remove references to "explosives" per se from the draft protocol. References to "explosives" incidental to subparagraphs *(c)* (i) and (ii) of the definition of "firearm" in article 2 were not affected by the decision and were therefore retained.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 2
"Definitions

"For the purpose of this Protocol, the following definitions shall apply:

"*(a)* 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm [provided that those components are themselves subject to authorization in the respective State Party];[59]

"[*Old paragraph (b) has been deleted*][60]

[58]At the seventh session of the Ad Hoc Committee, Malawi proposed the use of the present text of article 18 bis to define the term "broker" at this point (see A/AC.254/5/Add.22). The United States, which had proposed dealing with brokering in articles 5 (Criminalization) and 18 bis (Registration and licensing requirements), indicated that it would consider developing a suitable definition for consideration in informal consultations during the eighth session of the Ad Hoc Committee (see A/AC.254/L.150). Australia also proposed the incorporation of a new provision into article 2 defining the term "deactivated firearm", in order to clarify the meaning of that term as it was used in article 10 (see A/AC.254/5/Add.22).

[59]At the eighth session of the Ad Hoc Committee, Japan proposed that while the components should be defined in accordance with domestic law, blank cartridges (complete cartridges with a primer and propellant powder), primers, propellant powder, exploding bullets and exploding projectiles should be included in the definition of "ammunition" (see A/AC.254/L.171).

[60]The informal consultations held during the eighth session of the Ad Hoc Committee recommended deletion of former article 2, subparagraph *(b)*, which defined "controlled delivery", because that term was no longer used anywhere in the draft protocol.

"*(b)* 'Firearm':

"(i) Any [portable] [lethal] barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after [1870] [1899]; [and

"(ii) Any [other weapon or destructive device such as] an explosive bomb, incendiary bomb or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];[61]

"*(c)* 'Illicit manufacturing': the manufacturing or assembly of firearms, their parts and components or ammunition:

"(i) From parts and components illicitly trafficked;

"(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacture;[62]

Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;[63]

"*(d)* 'Illicit trafficking':[64] the import, export, acquisition, sale, [brokering,][65] delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol;[66]

"[*Options 1, 2 and 4 and subparagraphs (ii) and (iii) were deleted*]

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[61]At the informal consultations held during the eighth session of the Ad Hoc Committee, discussion resumed on this provision. While some delegations had concerns, a clear majority of delegations at both the seventh and eighth sessions expressed the view that the devices included in subparagraph *(b)* (ii) should be subject at least to the criminalization provisions of article 5. Beyond this, however, there was no clear consensus as to whether they should be defined as "firearms" and thereby included within the other requirements of the draft protocol.

[62]As indicated above, China proposed adding the words "duplicate or false marking" to this provision in order to include cases where firearms were marked at manufacture, but in a manner that would intentionally defeat or resist subsequent efforts to trace them. At the informal consultations held during the eighth session of the Ad Hoc Committee, there was general agreement that this concern should be addressed, but not on how this should be done. Options included adding language into article 2, subparagraph *(c)*, as proposed or adding the use of false or duplicate markings to article 5 (Criminalization). As a compromise, Switzerland proposed that the words "in accordance with article 9" should be added at the end of subparagraph *(c)* (iii). Some delegations indicated that this might be acceptable if appropriate changes were then made to article 9 (Marking of firearms).

[63]The last sentence of this paragraph was proposed by Canada and Japan at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.164).

[64]The informal consultations held during the eighth session of the Ad Hoc Committee decided to recommend that this text, former option 3, should be used as the basis for future consideration. Other possible wording that was discussed included "without the authorization of or in violation of the legislation or regulations of either of the States Parties concerned" (France); and "in violation of the legislation or regulations of any of the States Parties concerned or without the authorization of any of the States Parties concerned under the terms of this Protocol" (Mexico, see A/AC.254/L.165).

[65]The informal consultations held during the eighth session of the Ad Hoc Committee recommended that the reference to "brokering" at the end of option 4 of former article 2, subparagraph *(e)* (i), should be deleted and replaced with this reference. The general preference was to deal with the question of brokering, if at all, by defining the term "broker" (see proposal submitted by Canada at the eleventh session of the Ad Hoc Committee, contained in document A/AC.254/L.257) and making specific provision for offences in article 5 and for licence requirements in article 18 bis. Pending discussion of that proposal, however, it was decided to retain this reference in square brackets.

[66]At the informal consultations held during the eighth session of the Ad Hoc Committee, some delegations expressed concern that the current text did not cover the transfer of unmarked firearms, since there was no obligation for States parties not to authorize such transfers. Australia proposed adding the words "or if the firearms are not marked" at the end of this sentence (see also the text for article 11, para. 2, proposed by Australia, Norway and Switzerland and contained in document A/AC.254/L.167). Other delegations suggested that this should be dealt with under article 5. The informal consultations also recommended that former subparagraph (iii), dealing with the removal or alteration of serial numbers, should be deleted and that similar text should be considered under article 5.

"*(e)*[67] 'Parts and components': any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

"*(e)* bis 'Tracing':[68, 69] the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting law enforcement authorities of States Parties and, where appropriate, relevant intergovernmental organizations in analysing and monitoring illicit trafficking, as well as aiding competent national authorities in identifying suspects involved in criminal violations;[70]

"*(f)* 'Transit':[71, 72] [the movement or transfer of a shipment of firearms, their parts and components or ammunition from the territory of one State to that of another State across the territory of a third State, provided that in the third State the goods

"Option 1

"(i) Are admitted to a place of temporary storage as defined under domestic law;[73]

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[67]This new text was proposed by Switzerland, the United Kingdom and the United States at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.166). Several delegations noted that this provision was linked to the definition of "firearm" and that, as drafted, it would include parts and components of both firearms and other devices listed in subparagraphs (i) and (ii) of that definition in draft article 2, subparagraph *(b)*. Some delegations supported this, while others felt that the present text of subparagraph *(e)* might have to be revised if the final definition of "firearm" included both subparagraphs (i) and (ii). The informal discussions held during the eighth session of the Ad Hoc Committee recommended that the words "other related materials" should be replaced with the words "parts and components" throughout the text (see A/AC.254/L.174, para. 4). The definition of the term "other related materials" was accordingly deleted from option 1 of former subparagraph *(f)*.

[68]Text proposed by Canada and Italy at the informal consultations held during the eighth session of the Ad Hoc Committee, with the words "where appropriate" added on the proposal of the Islamic Republic of Iran.

[69]At the informal consultations held during the eighth session of the Ad Hoc Committee, there was extensive discussion of the new text. Most delegations supported the text, but several expressed concerns about specific elements. China voiced strong reservations about the concluding words and noted that there was no consensus that the provision should be adopted by the Ad Hoc Committee in its present form. China, the Islamic Republic of Iran and Pakistan preferred wording that would limit the use of tracing to criminal suspects or cases linked in some way to transnational organized crime, as opposed to criminal suspects of any kind. Most delegations opposed such limits on the basis that there was often no clear demarcation between organized and other transnational criminal activities and that it would in many cases be impossible to establish whether transnational organized crime was involved in a particular case or not until after the firearms in question had been traced. China proposed that the words "as well as aiding competent national authorities in identifying suspects involved in criminal violations" should be placed in square brackets pending further discussion. The Islamic Republic of Iran proposed replacing the words "criminal violations" with the words "transnational criminal activities". Pakistan proposed the following wording: "suspects working for an organized criminal group and involved in illicit manufacturing of or trafficking in firearms". Mexico supported the text as proposed, but, as a compromise, proposed replacing the words "criminal violations" with the words "violations included in this Protocol". The Russian Federation supported the text as proposed, but, also as a compromise, proposed replacing the words "aiding competent national authorities in identifying suspects involved in criminal violations" with the words "identifying suspects involved in such trafficking". A few delegations also expressed concern that the requirement for the "systematic tracking" of firearms might be costly or difficult for developing countries to implement.

[70]At the informal consultations held during the eighth session of the Ad Hoc Committee, the United States also proposed a definition of the term "broker" at this point, in combination with substantive proposals to amend articles 5 (Criminalization) and 18 bis (Registration and licensing of brokers [, traders and forwarders]) (see A/AC.254/L.150).

[71]At the informal consultations held during the eighth session of the Ad Hoc Committee, there was discussion of the proposal of Colombia to define the term "in-transit country". There was general agreement that a definition was needed and that it should ensure that transit cases should generally be subject to the protocol, but that some circumstances under which there was little or no chance of loss or diversion (e.g., shipments that flew over territories or passed through coastal waters without stopping) should be excluded. Consensus was not reached with respect to other transit cases (e.g., shipments that passed through or were trans-shipped under some form of customs control). This text was produced by a working group set up to examine the issue. It was agreed to place it in the draft protocol for purposes of further discussion, but it was not discussed during the eighth session.

[72]The working group noted that, in the opinion of one delegation, a definition of the term "transit" might not be needed if article 11, paragraph 2, ultimately required States parties not to allow transit without verifying that the receiving State had issued the appropriate licences or authorizations.

[73]The working group noted that several delegations had specific concerns about the wording of this provision. One delegation felt that the word "temporary" was not sufficiently clear. Another was concerned about the reference to domestic law. A third pointed out that dealers often avoided unloading and storing shipments because this created opportunities for theft or diversion. The working group also noted that the intended meaning of the word "storage" in the proposed text included such things as admission to a free zone, free warehouse or customs warehouse.

"(ii) Undergo inward processing[74] or economically relevant processing; or

"(iii) Change modalities of transport.[75]

"Option 2

"do not enter the market or domestic consumption.]"[76]

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 2
"Use of terms[77]

"For the purposes of this Protocol:

"*(a)* 'Ammunition' shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

"*(b)* 'Firearm' shall mean:[78]

"(i) Any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899; [and

"(ii) Any [other weapon or destructive device such as] an explosive bomb, incendiary bomb or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];[79]

"*(c)* 'Illicit manufacturing' shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

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[74]The working group noted that "inward processing" was a technical term referring to customs clearance procedures.

[75]The working group noted that the words "modalities of transport" referred to ships, aircraft, trucks, trains and so on.

[76]The working group noted that some delegations felt that this language would create excessively broad obligations for domestic customs controls.

[77]At the eleventh session of the Ad Hoc Committee, article 2 was finalized, with the exception of subparagraphs *(b)* (ii), *(c)* (iii) and *(d)*.

[78]At the eleventh session of the Ad Hoc Committee, subparagraph *(b)* (i) was finalized, with the following explanatory note: "The word 'portable' in subparagraph *(b)* (i) was included on the understanding that the intended meaning was to limit the definition of 'firearm' to firearms that could be moved or carried by one person without mechanical or other assistance." (See the interpretative note below under section C.)

[79]At the eleventh session, an informal working group established to consider articles 2 and 5 of the draft protocol recommended the deletion of subparagraph *(b)* (ii) and the adoption of a modified version of the Norwegian proposal for article 5, paragraph 1 *(d)*, that would require States parties to criminalize importing, exporting or manufacturing portable destructive devices without a licence or authorization (see A/AC.254/L.268). The group also proposed that the definition of the term "destructive devices" should be left to domestic law, with a note to be included in the *travaux préparatoires* describing such devices. The Islamic Republic of Iran proposed to delete all references to destructive devices, while encouraging States parties to criminalize illicit trafficking in such devices or to apply other provisions of the protocol to them using other agreements between interested States (see A/AC.254/L.273). On the final day of the eleventh session, the Chairman proposed a number of changes to address all of the major issues that remained unresolved (see A/AC.254/4/Add.2/Rev.6, annex). His proposals included the deletion from the draft protocol of all references to destructive devices.

"(i) From parts and components illicitly trafficked;

"(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacture, in accordance with article 9 of this Protocol;

Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;

"*(d)* 'Illicit trafficking': the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 9 of this Protocol;[80]

"*(e)* 'Parts and components' shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

"[*Former paragraph* (f) *was deleted*]

"*(f)* 'Tracing' shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking."

Notes by the Secretariat

3. At its twelfth session, the Ad Hoc Committee considered, finalized and approved article 2 of the draft protocol, as amended. The reference to "destructive devices" was removed. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000.

4. The representative of Turkey requested that the report of the Ad Hoc Committee on its twelfth session should include the statement that he had made before the approval of the draft protocol. The illicit manufacturing of and trafficking in firearms, their parts and components and ammunition had always been of serious concern to his Government, on geographical and other grounds. That was why his Government had been insisting throughout the negotiation process on a wider scope, a more comprehensive definition of firearms and an effective marking system not only for firearms, but also for their parts and components and ammunition. His Government had made several proposals to improve the text, but it had not been possible to achieve consensus on including parts and components of firearms within the marking system. With regard to destructive devices, his Government regretted that, at the twelfth session of the Ad Hoc Committee, at which it had been

[80]At the eleventh session of the Ad Hoc Committee, there was agreement on the wording of this provision. It was decided, however, to reserve a final decision on the words "or if the firearms are not marked in accordance with article 9 of this Protocol" until the exact marking requirements of article 9 had been finalized.

expected to find compromise solutions to all pending issues, no substantive discussion had taken place in order to arrive at an adequate definition. His Government would continue to contribute to all efforts aimed at establishing an effective regime against the illicit manufacturing of and illegal trading in destructive devices, firearms, their parts and components and ammunition, in all relevant international and regional forums.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 3
Use of terms

For the purposes of this Protocol:

(a) "Firearm" shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;

(b) "Parts and components" shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

(c) "Ammunition" shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

(d) "Illicit manufacturing" shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

(i) From parts and components illicitly trafficked;

(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol;

Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;

(e) "Illicit trafficking" shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol;

(f) "Tracing" shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

C. Interpretative note

The interpretative note on article 3 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its twelfth session (see A/55/383/Add.3, para. 3) is as follows:

Subparagraph (a)

The word "portable" in subparagraph *(a)* was included on the understanding that the intended meaning was to limit the definition of "firearm" to firearms that could be moved or carried by one person without mechanical or other assistance.

Article 4. Scope of application

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article IV
"Scope

"This Protocol applies to all classes of commercially traded firearms, ammunition and other related materials but not to state-to-state transactions or transfers for purposes of national security."

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article IV
"Scope[1]

"Option 1

"This Protocol applies to all classes of [commercially][2] traded [and manufactured][3] firearms, ammunition and other related materials but not to state-to-state transactions or transfers for purposes of national security.[4]

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[1]Mexico proposed the deletion of this article (see A/AC.254/5/Add.1 and Corr.1).

[2]Deletion proposed by Japan (see A/AC.254/5/Add.1 and Corr.1), supported by Croatia. Croatia also suggested using the same definition of the term "illicit trafficking" in both article II and article IV. The Syrian Arab Republic proposed to focus only on illicit firearms used by criminal organizations. South Africa proposed to delete the words "commercially traded", noting that they unnecessarily limited the scope of the protocol and might create loopholes that could be exploited (see A/AC.254/5/Add.5).

[3]Addition proposed by Japan (see A/AC.254/5/Add.1 and Corr.1), supported by the Syrian Arab Republic.

[4]Mexico, the Republic of Korea and Turkey expressed their concern about the technical difficulties that might be caused by the scope of the protocol being strictly limited only to organized crime. Some delegations, including those of Algeria, France, Germany and the Netherlands, suggested that the scope of the protocol should not go beyond the mandate set forth by the General Assembly. Sweden suggested that, even though the protocol should be subordinate to the convention, whose scope was limited to transnational organized crime, application of the protocol should not necessarily be limited to transnational organized crime. The United States expressed the view that some provisions of the protocol should go beyond the scope of transnational organized crime and was supported by the United Kingdom of Great Britain and Northern Ireland. Belgium noted that this article might run the risk of violating the Geneva conventions on the rules of conflict. Belgium also noted that, in view of the subject matter dealt with in this protocol, the Ad Hoc Committee should give consideration to the insertion of a safeguard clause in respect of international humanitarian law for situations involving armed conflict, in particular domestic armed conflict, within the meaning ascribed to those terms by international humanitarian law (see A/AC.254/5/Add.5). Canada noted that the issue of individuals travelling with firearms legitimately would need to be considered since individuals could be traffickers.

"Option 2[5]

"This Protocol applies to all classes of firearm, including those which are commercially traded, and all classes of ammunition and related materials, but not to state-to-state transactions or transfers for the purpose of national security.

"Option 3[6]

"This Protocol applies to all classes of firearms, ammunition and other related materials, except that it does not apply to state-to-state transactions or to transactions for purposes of national security.

"Option 4[7]

"This Protocol applies to all classes of illegally manufactured and traded firearms, ammunition and other related materials, as defined in article II of this Protocol."

Notes by the Secretariat

1. At the fifth session of the Ad Hoc Committee, Belgium (see A/AC.254/5/Add.10) and China (see A/AC.254/L.78) proposed new texts for this article, which are reproduced below.

Belgium (A/AC.254/5/Add.10)

Belgium proposed the addition of a new paragraph in draft article 4 (Scope), the wording of which was based on article 2, paragraph 19, of the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex), as follows:

"The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law shall not be governed by this Protocol."

China (A/AC.254/L.78)

"Article IV
"Scope

"This Protocol applies to all classes of commercially traded and manufactured firearms, ammunition and other related materials but not to state-to-state transactions or transfers for purposes of national security or to firearms manufactured exclusively to equip a State Party's own army or security force."

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[5]Alternative proposed by the United Kingdom (see A/AC.254/5/Add.1 and Corr.1).

[6]Alternative proposed by the United States (see A/AC.254/5/Add.1 and Corr.1), supported by Croatia and Ecuador.

[7]Alternative proposed by Colombia.

2. A majority of delegations supported either option 2 or option 3 of the rolling text contained in document A/AC.254/4/Add.2/Rev.1 or some compromise between the two. Some delegations preferred the inclusion of wording that would exclude the import or export of firearms by private individuals such as tourists or visiting hunters, based on option 1 or some other formula. A few delegations supported option 4, which would limit application to firearms that had been illegally manufactured and traded. Most delegations opposed option 4 on the grounds that, in order to control trafficking in firearms, it was necessary to monitor and place restrictions on all firearms trade, in order to determine what was legal and what was not. There was general support for excluding state-to-state transactions on the grounds that they were more related to arms control than crime control, but there was some concern about the precise meaning of the words "state-to-state transactions". Most delegations were of the view that this should exclude transfers from one Government to another but not transfers between entities owned or operated by Governments, such as state-owned arms manufacturers. One delegation proposed that transactions should be exempted if only one party was a State, but others argued that doing so would effectively exclude all acquisitions or transfers by a State. In a discussion regarding the phrase "commercially traded", there was some concern about what it meant and whether it would exclude certain types of transactions from those covered by the protocol. The United States expressed concern that the phrase "commercially traded and manufactured" might exclude surplus military firearms. Canada was of the view that it excluded only firearms taken from one State to another in private hands and regarded the exclusion as necessary. South Africa expressed concern about the possible interpretation that firearms simply given without consideration would not be "commercially traded".

3. The version of article 4 contained in document A/AC.254/4/Add.2/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2-4).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 4
"Scope[8]

"This Protocol applies to [all classes of commercially traded and manufactured][9] firearms, their parts and components[10] and ammunition, but not to state-to-state trans-

[8]This text was based on a proposal by Japan at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/5/Add.22), incorporating the words "or to firearms manufactured exclusively to equip a State Party's own army or security forces" from the proposal of China (see A/AC.254/5/Add.22).

[9]The words "commercially traded" had been discussed at several sessions of the Ad Hoc Committee. Generally, the concerns were that a broad interpretation might exclude too many cases (e.g., firearms made for military forces and subsequently diverted or legitimately traded into private circulation), but that if there were no limitations of this kind, the provision would include purely private individual transactions (e.g., sportsmen going abroad to hunt or shoot recreationally) (for the latter cases, see below concerning article 10, paragraph 6, of the present protocol).

[10]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

actions or transfers [for purposes of national security,][11] [or to firearms manufactured exclusively to equip a State Party's own army or security forces].[12]

"[*Options 1 to 4 were deleted*]"

Notes by the Secretariat

4. At the eleventh session of the Ad Hoc Committee, an informal working group recommended replacing the text with the following paragraphs (see A/AC.254/L.267):

"1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; and to the investigation and prosecution of offences established in article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

"2. This Protocol shall not apply to state-to-state transactions or transfers for purposes of national security, consistent with the Charter of the United Nations."

5. The working group also proposed that a note should be included in the *travaux préparatoires* to the effect that the words "state to state transactions" referred only to transactions by States in a sovereign capacity (see the interpretative note below under section C). There was general support for the proposed paragraph 1, but further discussion took place on the scope of the exclusion set forth in paragraph 2. China, Egypt and Pakistan reserved their position on the possibility of reintroducing into article 4 the text contained in the last square brackets of the rolling text contained in document A/AC.254/4/Add.2/Rev.5: "[or to firearms manufactured exclusively to equip a State Party's own army or security forces]", pending finalization of article 9. A further proposal, made by Egypt and Saudi Arabia and subsequently supported by China and Pakistan (see A/AC.254/L.270 and Add.1), did not resolve the issue. Mexico indicated its preference for placing the second paragraph of article 4 in a separate article entitled "saving clause" and reiterated its doubts as to the usefulness of the phrase "except as otherwise stated herein". On the final day of the session, the Chairman of the Ad Hoc Committee proposed a number of changes to resolve outstanding issues, one of which was to replace paragraph 2 with the following text (see A/AC.254/4/Add.2/Rev.6, annex):

"2. This Protocol shall not apply to state-to-state transactions or to State transfers in cases where the application of the Protocol would prejudice the right of a State

[11]Many delegations present at the informal consultations held during the eighth session of the Ad Hoc Committee expressed concern about the phrase "for purposes of national security". Some argued that it was either redundant vis-à-vis the words "state-to-state transactions" or unacceptable, as authorizing transfers by individuals or non-State organizations undertaken for national security purposes. Japan clarified the intended meaning as covering situations where military forces travelled across borders with their firearms and this was acceptable to most delegations. Others raised the examples of personal protection officers or bodyguards travelling with senior officials. One delegation supported interpretation of the wording to include cases of covert travel or transfers for "national security" purposes. Most of the delegations that spoke on this point indicated that language that would support such an interpretation would not be acceptable to them.

[12]At the informal consultations held during the eighth session of the Ad Hoc Committee, China indicated that it would have serious difficulties implementing the protocol without some language in this provision to exclude firearms made solely for security or military forces. China marked and kept records of such firearms, but used a separate system from that used for other firearms. Its delegation was of the view that this would not meet the requirements of article 9 and other provisions of the draft protocol, if they applied. Other delegations expressed the view that multiple systems would still be in compliance, provided that all met the basic requirements. In view of the problem of diversion of firearms from military or security stockpiles to illicit traffic, some delegations expressed concern that not requiring marking and recording of military firearms would make them untraceable if they later fell into non-military possession as a result of loss in armed conflict, theft or other diversions.

Party to take action in the interest of national security consistent with the Charter of the United Nations."

6. At its twelfth session, the Ad Hoc Committee considered, finalized and approved article 4 of the draft protocol, as amended on the basis of the recommendations of the informal working group (in respect of paragraph 1) and the proposal made by the Chairman (in respect of paragraph 2). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000.

7. The representatives of Chile and Mexico requested that the report of the Ad Hoc Committee on its twelfth session should indicate that their Governments had not participated in the decision of the Ad Hoc Committee on article 4, paragraph 2, of the draft protocol, but had not stood in the way of consensus. The representative of Colombia requested that the report of the Ad Hoc Committee on its twelfth session should reflect his Government's position on article 4, paragraph 2, of the draft protocol, namely, that it considered itself not to be bound by the decision of the Ad Hoc Committee on that provision. The representatives of Benin and Nigeria requested that the report of the Ad Hoc Committee on its twelfth session should indicate their reservations on article 4, paragraph 2, of the draft protocol, because of the exclusion of state-to-state transactions and state transfers. The representative of Ukraine requested that the report of the Ad Hoc Committee on its twelfth session should reflect his view that the words "state-to-state transactions" and "state transfers" were included in article 4, paragraph 2, on the understanding that they included state-to-state transactions involving firearms and State transfers of firearms effected on the basis of relevant agreements concluded between the Governments of the States concerned or on behalf of those Governments by virtue of powers conferred by them. The representative of Azerbaijan requested that the report of the Ad Hoc Committee on its twelfth session should indicate that his Government had reserved its right to make reservations regarding article 4, paragraph 2, of the draft protocol. The representative of the Syrian Arab Republic requested that the report of the Ad Hoc Committee on its twelfth session should reflect his Government's reservations regarding article 4 of the draft protocol. The representative of the Libyan Arab Jamahiriya requested that the report of the Ad Hoc Committee on its twelfth session should reflect his Government's reservations regarding the retention of article 4, paragraph 2 of the draft protocol. The representative of China requested that the report of the Ad Hoc Committee on its twelfth session should indicate his Government's reservation on article 4 of the draft protocol, namely, that the protocol should not apply to state-to-state transactions. The representative of India requested that the report of the Ad Hoc Committee on its twelfth session should reflect his Government's position on article 4, paragraph 2. In the view of that representative, the exclusions foreseen in that paragraph would be viewed only in narrow, precisely defined terms. His Government would enter a reservation to that effect at the time of signature of the protocol.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 4
Scope of application

1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

2. This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.

C. Interpretative note

The interpretative note on article 4 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its twelfth session (see A/55/383/Add.3, para. 4) is as follows:

Paragraph 2

The words "state-to-state transactions" refer only to transactions by States in a sovereign capacity.

Article 5. Criminalization

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article V
"Criminalization

"1. Each State Party shall adopt such legislative or other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

"*(a)* Illicit trafficking in firearms, ammunition and other related materials; and

"*(b)* Illicit manufacturing of firearms, ammunition and other related materials.

"2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties, the criminal offences established pursuant to the foregoing paragraph shall include participation in, association or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating and counselling the commission of such offences."

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article V
"Criminalization[1]

"1. Each State Party shall adopt such legislative [and,][2] or other measures as may be necessary to establish as [criminal][3] offences under its domestic law[, when committed intentionally]:[4]

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[1]There was also an intensive discussion on the issue of the scope of criminalization in this protocol in relation to the scope of the convention. The issue was whether this provision criminalized illicit trafficking in and manufacturing of firearms in general or only those acts which related to organized crime. Some delegations, including those of China and Senegal, expressed the view that a new list of offences should not be created in the protocol. Paraguay noted that article V did not add new offences to the convention but highlighted specific types of conduct already covered by the convention. Some delegations, including those of Canada, Germany, the United Kingdom of Great Britain and Northern Ireland and the United States, expressed the view that the protocol should establish as offences conduct not covered by the convention. It was suggested by Australia that consideration should be given to providing further explanations on the relationship of article V of the protocol to article 3 of the convention. The attention of the Ad Hoc Committee was drawn to Economic and Social Council resolution 1998/18, in which the Council decided that the Ad Hoc Committee should hold discussions on, inter alia, effective methods of identifying and tracing firearms, as well as on the establishment or maintenance of an import and export and in-transit licensing or similar authorization regime.

[2]Addition proposed by Croatia.

[3]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[4]Deletion proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1), South Africa (see A/AC.254/5/Add.5) and the United States (see A/AC.254/5/Add.1 and Corr.1), supported by Colombia and Paraguay. Japan proposed to modify the phrase to read ", when committed [unlawfully] and intentionally" (see A/AC.254/5/Add.1 and Corr.1). The Syrian Arab Republic proposed to keep the word "intentionally", noting, however, that "organized" crime implied an intentional offence.

"*(a)* Illicit trafficking in firearms, ammunition[, explosives][3] and other related materials; and

"*(b)* Illicit manufacturing of firearms, ammunition[, explosives][3] and other related materials.[5]

"[*(c)* [Illicit] detention and use of [illicitly trafficked or manufactured] firearms, ammunition and other related materials.][6]

"[2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties,[7] the criminal offences established pursuant to the paragraph 1 of this article shall include participation in, association or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating [and counselling][8] the commission of said offences.][9]

"[3. State Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council.]"[10]

Notes by the Secretariat

1. At the third session of the Ad Hoc Committee, France submitted a proposal (see A/AC.254/L.21) to add the phrase "and in connection with a criminal organization" at the end of paragraph 1.

Fifth session: 4-15 October 1999

Notes by the Secretariat

2. Delegations based their comments on the text of article 5 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.2, which was the same as that contained in document A/AC.254/4/Add.2/Rev.1, except that the phrase "and in connection with a criminal organization" was added in square brackets at the end of paragraph 1 (see note 1 by the Secretariat above).

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[5]The United Kingdom suggested giving consideration to establishing a new offence to cover the "brokering" of illicit firearm deals abroad by citizens operating from within their own countries (see A/AC.254/5/Add.1 and Corr.1). Japan suggested the criminalization of offences involving the offering of funds and transportation for illicit manufacturing and trafficking, in the absence of a conspiracy provision (see A/AC.254/5/Add.1 and Corr.1), and proposed that there should be a provision in this article that would encourage State parties to reduce or exempt from penalty in the case of voluntary surrender to the authorities for the collection of illicit firearms (see A/AC.254/5/Add.1 and Corr.1).

[6]Addition proposed by France, with reservations on the language in the inner square brackets.

[7]Croatia proposed that the wording "subject to the respective constitutional principles and basic concepts of the legal systems of the State Parties" could be substituted by similar wording to that of article 1 (option 1) of the convention.

[8]Deletion proposed by Pakistan.

[9]Croatia proposed the deletion of this paragraph since the contents of the paragraph were already included in the convention. That proposal was supported by Paraguay. The Netherlands suggested that the same wording as that of article 3 of the convention would be preferable.

[10]Addition proposed by the United States (see A/AC.254/5/Add.1 and Corr.1), supported by the Netherlands and South Africa (see A/AC.254/5/Add.5).

United States of America (A/AC.254/L.84)

The United States proposed adding the following language to the end of paragraph 1 of article V (Criminalization):

"*(d)* Acting on behalf of others, in return for a fee or other consideration, in negotiating or arranging transactions involving the international export or import of firearms, their parts or components, or ammunition without registering and obtaining a licence or other written authorization in accordance with the requirements of article XVIII bis of this Protocol."

Japan (A/AC.254/L.94)

Japan proposed amending paragraph 1 of article V (Criminalization), to read as follows:

"1. Each State Party shall adopt such legislative or other measures as may be necessary to establish, as an offence under its domestic law, when committed unlawfully and intentionally, the conduct defined as 'serious crime' in article 2 bis, subparagraph *(b)*, of the Convention."

Japan also proposed inserting a new paragraph after paragraph 2 of article V, to read as follows:

"State Parties that have not yet done so shall consider adopting the necessary legislative or other measures under their domestic laws to remit or reduce the penalty for persons who have committed a criminal offence established in this article if those persons have voluntarily surrendered to the authorities for the purpose of facilitating the collection of illicit firearms."

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 5
"Criminalization

"1. Each State Party shall adopt such legislative [and,] or other measures as may be necessary to establish as [criminal] offences ['serious crimes' as defined in article 2 bis, paragraph *(b)*, of the Convention][11] under its domestic law [, when committed intentionally][12] [and in connection with a criminal organization]:[13]

[11]At the fifth session of the Ad Hoc Committee, Japan proposed that wording should be added here that would ensure that domestic offences established pursuant to this article would also be considered "serious crimes" according to the definition of that term in article 2 bis, paragraph *(b)*, of the draft convention (see article 2 of the convention in part one).

[12]At the fifth session of the Ad Hoc Committee, a number of delegations supported the deletion of these words on the grounds that the mental element of crime was generally a matter for domestic law and that requiring intentional commission in an international instrument was unnecessarily restrictive.

[13]As indicated above, this addition was proposed by France (see A/AC.254/L.21). At the fifth session of the Ad Hoc Committee, a number of delegations supported the deletion of this text on the grounds that it was unnecessarily restrictive. The Islamic Republic of Iran proposed that the requirement should be strengthened by requiring connection to a "transnational" criminal organization. The Syrian Arab Republic proposed that the requirement should be expanded to include both connection with a criminal organization and the commission of some element of a transnational criminal offence in one of the States involved.

"*(a)* Illicit trafficking in firearms, ammunition [, explosives] [and other related materials]; [and][14]

"*(b)* Illicit manufacturing of firearms, ammunition [, explosives] [and other related materials];

"[*(c)* [Illicit] detention[15] and use of [illicitly trafficked or manufactured] firearms, ammunition and other related materials;]

"[*(d)* Importing, exporting and manufacturing of any explosive bomb, incendiary bomb, gas bomb, grenade, rocket, rocket launcher, missile system or mine without a licence or authorization from a competent authority of the State Party;][16] [and

"*(e)* Obliterating, removing or altering the serial number on a firearm.][17, 18]

"[2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties, the criminal offences established pursuant to paragraph 1 of this article shall include participation in, association or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating [and counselling] the commission of said offences.]

"[3. States Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council.]"[19]

Eighth session: 21 February-3 March 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 5 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.4, which was virtually the same as that contained in document A/AC.254/4/Add.2/Rev.3. The only difference was the dele-

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[14]After some discussion of a proposal to combine subparagraphs 1 *(a)* and *(b)*, it was decided at the fifth session of the Ad Hoc Committee that separate provisions were needed to clarify that compliance would require the enactment of two distinct offences, rather than a single combined offence. The insertion of the word "and" would depend on whether subparagraphs *(c)*, *(d)* or *(e)* (or any combination of those subparagraphs) remained in this paragraph.

[15]A number of delegations expressed concern or uncertainty about the meaning of the word "detention" in the English text. Botswana proposed that it should be replaced with the word "possession". Other delegations expressed concern that dealing with possession was beyond the mandate of the Ad Hoc Committee or that simple possession offences might not be treated as criminal offences (as opposed to administrative or regulatory offences) in domestic law. Others argued that possession offences were needed to control illicit trafficking and were therefore not beyond the mandate of the Ad Hoc Committee and that they would be an important tool in combating transnational organized crime. Some delegations voiced support for including the word "possession" but wanted the word "use" excluded. Several delegations voiced concern that domestic legislation implementing this requirement, if not properly worded, might include innocent possession of illicitly trafficked or manufactured firearms. Switzerland pointed out that that possibility would be eliminated by the reference to "illicit" possession or detention, so long as that word was retained.

[16]This addition was proposed by Norway at the fifth session of the Ad Hoc Committee as a consequence of its proposal that subparagraph *(c)* (ii) of article 2 (which included these devices in the definition of "firearm") should be deleted. A number of delegations expressed support for this proposal as a compromise solution. Others maintained that the text should be deleted entirely as it went beyond the mandate of the Ad Hoc Committee. Several delegations continued to support its retention in article 2. A number of delegations reserved their position pending translation of the proposed texts.

[17]The Republic of Korea proposed that this text, presently in subparagraph *(e)* (iii) of article 2, should be inserted in article 5. The proposal was supported by Botswana and France.

[18]At the fifth session of the Ad Hoc Committee, the United States proposed that a provision criminalizing activities relating to the "brokering" of transactions otherwise designated as illicit in article 5 should be inserted here (see A/AC.254/L.84 above).

[19]At the fifth session of the Ad Hoc Committee, the majority of delegations argued that this provision was an arms control measure and not a crime control measure and, being beyond the mandate of the Ad Hoc Committee, should be deleted. Several delegations argued that, to the contrary, the breaking of United Nations arms embargoes in conflict situations was an activity likely to be engaged in by transnational organized criminal groups and should therefore be dealt with in the draft protocol.

tion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 5
"Criminalization[20]

"1. Each State Party shall adopt such legislative or other measures as may be necessary to establish as offences ['serious crimes'[21] as defined in article 2 bis, subparagraph *(b)*, of the Convention][22] under its domestic law [, when committed in connection with a criminal organization]:[23]

"*(a)* Illicit trafficking in firearms, their parts and components[24] and ammunition; [and]

"*(b)* Illicit manufacturing of firearms, their parts and components and ammunition;

"[*(c)* Illicit possession[25] and use of [illicitly trafficked or manufactured] firearms, their parts and components and ammunition;[26]]

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[20]At early sessions of the Ad Hoc Committee, there was discussion on the general relationship between the scope of the criminalization provisions in the draft convention (now found in articles 3, 4, 4 ter and 17 bis). There was subsequently substantial agreement that the protocol should require States parties to criminalize specific forms of conduct, such as illicit trafficking in firearms or the defacement of serial numbers, which were not dealt with in the convention. With respect to some criminalization provisions, the question of whether the conduct would be criminalized in general or only when associated in some way with transnational organized crime remained open.

[21]During the informal consultations held during the eighth session of the Ad Hoc Committee, Pakistan proposed that the words "serious crimes" should be replaced with the words "serious transnational crimes".

[22]At the fifth session of the Ad Hoc Committee, Japan proposed that wording should be added here that would ensure that domestic offences established pursuant to this article would also be considered "serious crimes" according to the definition of that term in article 2 bis, subparagraph *(b)*, of the draft convention. The informal consultations held during the eighth session of the Ad Hoc Committee deferred further consideration of the words in square brackets in order to wait for the finalization of the corresponding provision of the draft convention.

[23]At various sessions of the Ad Hoc Committee, some delegations had supported requiring a connection to a criminal organization as consistent with the mandate of the Ad Hoc Committee, while others had opposed it as inconsistent with the mandate and unnecessarily restrictive. At the informal consultations held during the eighth session of the Ad Hoc Committee, Pakistan proposed the wording "and involving an organized criminal group" for better consistency with the draft convention.

[24]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

[25]At the informal consultations held during the eighth session of the Ad Hoc Committee, there was discussion about the meaning of the word "detention", previously used in the English version of this text. It was noted that this had been translated from the word "detention" used in the original French-language proposal. The Secretariat noted that linguistic concordance was a matter for the United Nations translators and editors to deal with and undertook to have all five other languages reviewed for consistency with the original French term. Discussion then proceeded on the basis that the closest English equivalent was the word "possession". On that basis, most delegations expressed the view that controls on possession were a matter for domestic law. Some opposed the text on that basis, while others indicated that they could accept it, given that their national legislation would be in compliance with it. Some noted that including the term "illicit possession" would make the nature and extent of any controls a matter of domestic law in any event. One delegation noted that the inclusion of the words "parts and components" was problematic, since most domestic legislative controls were directed at the possession of firearms and not their parts or components. At previous sessions, some delegations had argued that the inclusion of a provision on possession offences was needed to control illicit trafficking and was therefore not beyond the mandate of the Ad Hoc Committee, and that such a provision would be an important tool in combating transnational organized crime.

[26]At the informal consultations held during the eighth session of the Ad Hoc Committee, some delegations proposed deletion of the words "parts and components and ammunition" since in their countries there was no control mechanism or legislation with regard to the possession of these items.

"[*(d)* Importing, exporting and manufacturing of any explosive bomb, incendiary bomb, gas bomb, grenade, rocket, rocket launcher, missile system or mine without a licence or authorization from a competent authority of the State Party;][27] and

"*(e)* [Illicitly] obliterating, removing or altering the serial number on a firearm [those markings of a firearm required by article 9 of this Protocol][28] [without lawful authority].[29, 30]

"[2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties, the criminal offences established pursuant to paragraph 1 of this article shall include participation in, association or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating [and counselling] the commission of said offences.]

"[3. States Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council.]"

Eleventh session: 2-28 October 2000

Japan (A/AC.254/L.265)

Japan proposed to amend paragraph 2 of article 5 (Criminalization) to read as follows:

"2. Subject to the basic concepts of its legal system, each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the following conduct:

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[27]This proposal was made by Norway at the fifth session of the Ad Hoc Committee. At the informal consultations held during the eighth session of the Ad Hoc Committee, Norway presented the proposal as a compromise between those who opposed dealing with other devices as impracticable and beyond the mandate of the Ad Hoc Committee and those who supported controls on the ground that such devices were often trafficked and sometimes used by transnational organized criminal groups (see also above, concerning article 3 (Use of terms) of the present protocol). It was noted that, while many delegations support the proposed compromise, there was still no consensus and further discussion was deferred.

[28]This was alternative text for the words "serial number" proposed by Switzerland at the informal consultations held during the eighth session of the Ad Hoc Committee. Some delegations supported it on the ground that it would encompass new marking technologies that might be developed in the future. Other delegations preferred the term "serial number", as this was the minimum marking needed for tracing and a cross-reference to the full requirements of article 9 might make implementation more difficult.

[29]At the informal consultations held during the eighth session of the Ad Hoc Committee, China proposed adding the word "illicit" at the beginning of this provision, while the United Kingdom proposed adding the words "without lawful authority" at the end. Both expressed the view that there was a need to take account of cases where serial numbers might need to be altered for legitimate reasons; several other delegations expressed support for this position. Some delegations expressed concern about the breadth of any possible exception to the marking requirement and the implications for tracing, however, and it was decided to recommend that the two options should be kept in square brackets for further consideration. Pakistan requested that the record should note that time did not permit the conclusion of discussion on this paragraph.

[30]Some delegations attending the informal consultations held during the eighth session of the Ad Hoc Committee requested that note should be taken at this point of several proposals for further criminalization requirements, which, if adopted, would be inserted at this point in the text. These included the following:

(a) An offence of brokering without licence or registration, proposed by the United Kingdom and the United States (see A/AC.254/L.150);

(b) Offences relating to fraudulent licensing or authorization documents, proposed by Norway (see A/AC.254/5/Add.22);

(c) Offences relating to the purchase of illicit firearms, proposed by Colombia (see A/AC.254/5/Add.22);

(d) Offences relating to the organization, management or financing of illicit activities under the protocol, proposed by Colombia (see A/AC.254/5/Add.22).

"*(a)* Attempting to commit an offence set forth in paragraph 1 of this article; and

"*(b)* Participating as an accomplice in, organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraph 1 of this article."

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 5
"Criminalization[31]

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the following conduct, when committed intentionally:

"*(a)* Illicit trafficking in firearms, their parts and components and ammunition;

"*(b)* Illicit manufacturing of firearms, their parts and components and ammunition;

"[*Former subparagraph (c) was deleted*]

"[*(c)* Importing, exporting and manufacturing of any explosive bomb, incendiary bomb, gas bomb, grenade, rocket, rocket launcher, missile system or mine without a licence or authorization from a competent authority of the State Party;][32] and

"*(d)* Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 9 of this Protocol.

"2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the following conduct:[33]

"*(a)* Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

"*(b)* Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article."

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[31]At the eleventh session of the Ad Hoc Committee, the text of article 5 of the draft protocol was finalized, with the exception of paragraph 1 *(c)*, which remained open pending a decision about whether to deal with destructive devices in the protocol.

[32]At the eleventh session of the Ad Hoc Committee, an informal working group established to consider articles 2 and 5 of the draft protocol recommended the deletion of article 2, subparagraph *(b)* (ii), and the replacement of article 5, paragraph 1 *(c)*, with a provision requiring States parties to criminalize importing, exporting or manufacturing portable destructive devices without a licence or authorization. The group also proposed that the definition of the term "destructive devices" should be left to domestic law, with a note to be included in the *travaux préparatoires* describing such devices (see A/AC.254/L.268). The Islamic Republic of Iran proposed to delete all references to destructive devices, while encouraging States parties to criminalize illicit trafficking in such devices or to apply other provisions of the protocol to them using other agreements between interested States (see A/AC.254/L.273). On the final day of the eleventh session, the Chairman proposed a number of changes to address all of the major issues that remained unresolved. His proposals, which included the deletion from the draft protocol of all references to destructive devices, were still under discussion when the eleventh session was adjourned.

[33]At the eleventh session of the Ad Hoc Committee, paragraph 2 was finalized, on the understanding that two interpretative points would be clarified by the inclusion of notes in the *travaux préparatoires* (see section C concerning the present article, below).

Notes by the Secretariat

4. At its twelfth session, the Ad Hoc Committee finalized and approved article 5 of the draft protocol, as amended. Paragraph 1 *(c)* was deleted. The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:

(a) Illicit manufacturing of firearms, their parts and components and ammunition;

(b) Illicit trafficking in firearms, their parts and components and ammunition;

(c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of this Protocol.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:

(a) Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article.

C. Interpretative notes

The interpretative notes on article 5 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its twelfth session (see A/55/383/Add.3, paras. 5 and 6) are as follows:

Paragraph 2

(a) The "other measures" mentioned here are additional to legislative measures and presuppose the existence of a law.

(b) References to attempting to commit the offences established under domestic law in accordance with this paragraph are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also culpable or punishable under domestic law.

Article 6. Confiscation, seizure and disposal

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article VII
"Confiscation or forfeiture

"1. States Parties shall undertake to confiscate or forfeit firearms, ammunition and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

"2. States Parties shall adopt the necessary measures to ensure that all firearms, ammunition and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking do not fall into the hands of private individuals or businesses through auction, sale or other disposal."

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article VII
"Confiscation or forfeiture[1]

"1. States Parties shall undertake to confiscate or [forfeit][2] firearms, ammunition [,explosives][3] and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

"Option 1

"[2. States Parties shall adopt the necessary measures to ensure that no firearms, ammunition[, explosives][3] and other related materials seized, confiscated or forfeited

[1]It was considered that the final form of this article would be influenced by the general provision on confiscation and forfeiture in the convention. If that provision proved inapplicable or insufficient in respect of the particular needs of the subject matter of this protocol, the article would require further elaboration.

[2]Replacement of the word "forfeit" with the words "require forfeit of" was suggested by the United Kingdom of Great Britain and Northern Ireland. A similar proposal was submitted at the eighth session of the Ad Hoc Committee by Canada (see A/AC.254/L.157).

[3]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

as a result of illicit manufacturing or trafficking fall into the hands of private individuals or businesses through auction [, sale][4] or other disposal.[5,][6]

"Option 2[7]

"2. States Parties shall prevent illicitly manufactured and trafficked firearms and ammunition from falling into the hands of criminals by seizing and destroying such firearms and ammunition unless other disposal [that includes destroying them or rendering them unusable][8] has been officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded."

Notes by the Secretariat

1. The version of this article contained in document A/AC.254/4/Add.2/Rev.1 remained virtually unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2-4). The only difference in the text contained in document A/AC.254/4/Add.2/Rev.4 was the deletion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 7
"Confiscation or forfeiture

"1. States Parties shall undertake to confiscate or [forfeit] firearms, their parts and components[9] and ammunition that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

"Option 1

"[2. States Parties shall adopt the necessary measures to ensure that no firearms, their parts and components and ammunition seized, confiscated or forfeited as a result

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[4]It was noted by the Syrian Arab Republic that domestic legislation should determine how the sale of confiscated firearms was regulated (see A/AC.254/L.67).

[5]It was suggested by South Africa that the destruction of unauthorized weapons should also be included in this provision. The Russian Federation and Senegal suggested that those confiscated firearms disposed of in a controlled fashion should not necessarily be destroyed.

[6]The Chairman suggested placing this paragraph in square brackets because of the conflicts with the domestic laws of some States.

[7]Alternative proposed by Germany and the Republic of Korea, taken from the action plan recommended by the Senior Experts Group on Transnational Organized Crime.

[8]Proposal made by South Africa (see A/AC.254/5/Add.5).

[9]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

of illicit manufacturing or trafficking fall into the hands of private individuals or businesses through auction [, sale] or other disposal.]

"Option 2

"2. States Parties shall prevent illicitly manufactured and trafficked firearms and ammunition from falling into the hands of criminals by seizing and destroying such firearms and ammunition unless other disposal [that includes destroying them or rendering them unusable] has been officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded."

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 7
"Confiscation, seizure and disposal

"1. Without prejudice to article 12 of the Convention, States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked.

"2. States Parties shall adopt, within their domestic legal systems, such measures as may be necessary to prevent illicitly manufactured and trafficked firearms, parts and components and ammunition from falling into the hands of unauthorized persons by seizing and destroying such firearms, their parts and components and ammunition unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded."

Notes by the Secretariat

2. The Ad Hoc Committee considered this article at its eleventh session. Article 7 of the draft protocol was finalized without further amendment and approved by the Ad Hoc Committee at its twelfth session (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 6
Confiscation, seizure and disposal

1. Without prejudice to article 12 of the Convention, States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked.

2. States Parties shall adopt, within their domestic legal systems, such measures as may be necessary to prevent illicitly manufactured and trafficked firearms, parts and components and ammunition from falling into the hands of unauthorized persons by seizing and destroying such firearms, their parts and components and ammunition unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded.

Prevention

Article 7. Record-keeping

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article VIII
"Record-keeping

"1. Each State Party shall maintain for not less than ten years the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations.

"2. Records shall be kept for a period of not less than ten years after the last transaction effected under a particular certificate. States Parties shall identify to one another the agencies responsible for such record-keeping.

"3. States Parties shall use their best efforts to computerize their records for the purpose of enhancing one another's effective access to such information."

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article VIII
"Record-keeping

"1. Each State Party shall maintain[1] for not less than [ten][2] years the information[3] necessary to trace and identify illicitly manufactured and illicitly trafficked

[1]At the fifth session of the Ad Hoc Committee, the United Kingdom expressed concern about the wording requiring States Parties to "maintain" the specified records themselves (paragraph 1). In some cases, record-keeping was required by domestic law, but the records were actually created and kept by the companies that manufactured, imported or exported the firearms and not by the States themselves.

[2]Mexico proposed to reduce "ten years" to "five years" (see A/AC.254/5/Add.1 and Corr.1), supported by the Syrian Arab Republic. New Zealand expressed its preference for ten years. During the fifth session of the Ad Hoc Committee, a majority of delegations argued that records should be kept for an extended period on the grounds that firearms themselves were very durable and might have to be traced over long periods. To those delegations, the proposed 10-year period was an acceptable compromise, but any shorter period would not be appropriate. A few delegations preferred more general wording that would simply require records to be kept for "as long as possible" (see note 1 by the Secretariat below).

[3]Some delegations, including those of Japan, the Netherlands, the Russian Federation, the Sudan, Switzerland, the Syrian Arab Republic and the United Kingdom of Great Britain and Northern Ireland, noted that there was a need to clarify the contents of "information" required.

firearms to enable it to comply with its obligations [under this Protocol][4]. [In cases involving the export, import, brokerage and transit of firearms, the record shall include in particular:

"*(a)* The appropriate markings applied at the time of manufacture;

"*(b)* The country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the articles.][5]

"2.[6] [Records shall be kept for a period of not less than [ten][7] years after the last transaction effected under a [particular certificate].[8]][9] [States Parties shall identify to one another the agencies responsible for record-keeping.][10]

"Option 1

"[3. States Parties shall use their best efforts to computerize their records for the purpose of enhancing one another's effective access to such information.][11]

"Option 2[12]

"3. States Parties shall use their best efforts to computerize their records. Upon request, those records should be open for confidential access by all States Parties."

Notes by the Secretariat

1. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of

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[4]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[5]Addition proposed by Switzerland. At the fifth session of the Ad Hoc Committee, there was further discussion of this proposal and of what the record should include. France and Norway expressed their support for the proposal.

[6]Also at the fifth session, a number of delegations voiced their concern about paragraph 2 of the draft article. Many considered that it overlapped with paragraph 1 and was therefore unnecessary or confusing. The United States explained that the first sentence was intended to refer to records of specific transactions as opposed to records in general, to which different rules applied. France expressed concern over the drafting and/or translation of the second sentence, which did not make it clear whether it applied to state-created and state-maintained records, private commercial ones or both. There was general agreement that this provision, if it was to be kept at all, would require revision and clarification. It was agreed that this would be done after the discussion of article 11, which should provide a clearer indication of what sorts of records needed to be kept and by whom.

[7]The United States of America proposed to reduce "ten years" to "five years" (see A/AC.254/5/Add.1 and Corr.1). That proposal was supported by the Syrian Arab Republic. New Zealand expressed its preference for "ten" years.

[8]The United States (see A/AC.254/5/Add.1 and Corr.1) proposed to replace the words "particular certificate" with the words "licence or authorization".

[9]Mexico proposed the deletion of the entire sentence in square brackets (see A/AC.254/5/Add.1 and Corr.1).

[10]The Russian Federation proposed the deletion of this sentence, noting that the authorities responsible for such record-keeping were not necessarily the same as the authorities responsible for exchanging such information. Switzerland noted that the issue here was related to the area of arms control and that the issue of information exchange should be handled carefully.

[11]Mexico and the United States proposed to delete this paragraph. The Sudan noted that it was rather difficult for developing countries to computerize such information. Norway and South Africa (see A/AC.254/5/Add.5) supported the original paragraph. The Chairman proposed to replace the words "to computerize" with the words "to use modern technology". South Africa noted that there should be attempts to ensure the compatibility of computer systems at least within regions (see A/AC.254/5/Add.5).

[12]Alternative proposed by Switzerland. The United States suggested that the issue of confidentiality should be dealt with in the provision on information exchange, which was supported by Canada. There was some discussion of this provision at the fifth session of the Ad Hoc Committee. Most of the delegations that spoke on the subject supported the idea of a provision on "best efforts", encouraging States to computerize records, in particular if developing countries were given appropriate technical assistance. Most indicated that allowing other States or agencies direct access to their States' computerized records would not be acceptable. Australia, France and Italy supported the idea of inserting in articles 14 and 17 those portions of this paragraph which were acceptable. Switzerland indicated that this would be acceptable to it and that it would like to add more details to its proposal in the light of the discussions that had taken place.

the Ad Hoc Committee, many participants suggested a period of record-keeping "for as long as possible and for a minimum of ten years", recognizing that firearms were durable goods (see A/AC.254/L.86, para. 17).

2. The version of this article contained in document A/AC.254/4/Add.2/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2 and 3).

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.2/Rev.4)

"Article 8
"Record-keeping[13]

"Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms [, their parts and components and [, as appropriate,][14] ammunition][15] that is necessary to trace and identify those firearms which are illicitly manufactured or trafficked and to prevent and detect such activities [within its jurisdiction].[16] The information shall [may][17] include:

"*(a)* The appropriate markings applied at the time of manufacture;

"*(b)* In cases involving international transactions [in firearms, their parts and components and ammunition],[15] the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries where appropriate and the final recipient and the description and quantity of the articles."

Eleventh session: 2-28 October 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 8 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.5, which was the same as that contained in document A/AC.254/4/Add.2/Rev.4.

[13]The text of this article was proposed at the seventh session of the Ad Hoc Committee by Canada (see A/AC.254/L.129) and was adopted with several amendments for purposes of further discussion.

[14]Proposed by Italy at the seventh session of the Ad Hoc Committee to accommodate the concerns of some delegations who had expressed difficulty with the inclusion of ammunition. Some delegations argued that keeping records of ammunition transfers was an important element of the draft protocol. Other delegations expressed concern about the implications, notably the marking of ammunition, which was seen as impracticable.

[15]Proposed by the United States at the seventh session of the Ad Hoc Committee.

[16]Proposed by China at the seventh session of the Ad Hoc Committee. Some delegations supported the proposal because it added flexibility, while others opposed it as weakening the record-keeping requirement.

[17]At the seventh session of the Ad Hoc Committee, China proposed replacing the word "shall" with the word "may".

European Commission (A/AC.254/L.260)

The European Commission proposed that subparagraph *(a)* of article 8 should be amended to read:

"*(a)* The appropriate markings applied in accordance with article 9 of this Protocol;"

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 8
"Record keeping

"Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

"*(a)* The appropriate markings required by article 9 of this Protocol;

"*(b)* In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles."

Notes by the Secretariat

4. At its eleventh session, the Ad Hoc Committee considered and finalized article 8 of the draft protocol without further amendment. The article was placed together with articles 9 to 12, 14 and 15 of the draft protocol into one chapter entitled "Prevention", on the basis of proposals made by the Chairman of the Ad Hoc Committee (see A/AC.254/4/Add.2/Rev.6, annex, para. 1). The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

II. Prevention

Article 7
Record-keeping

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(a) The appropriate markings required by article 8 of this Protocol;

(b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Article 8. Marking of firearms

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article IX
"Marking of firearms

"1. For the purposes of identifying and tracing firearms, States Parties shall:

"*(a)* Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number;

"*(b)* Require appropriate markings on each imported firearm permitting the identification of the importer's name and address; and

"*(c)* Require the appropriate marking of any firearms confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

"2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article IX
"Marking of firearms

"1. For the purposes of identifying and tracing firearms [, referred to in article II, subparagraph *(c)* (i), of this Protocol],[1] States Parties shall:

"*(a)* Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number;[2]

[1]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[2]The United Kingdom of Great Britain and Northern Ireland suggested that there was a need to refer to the year of manufacture and to clarify the meaning of the "place of manufacture" (see A/AC.254/5/Add.1 and Corr.1).

"Option 1

"*(b)* Require appropriate markings on each imported firearm permitting the identification of the importer' s name and address[3] [, and an individual serial number if the firearm does not bear one at the time of import];[4] and

"Option 2[5]

"*(b)* Require appropriate markings on each imported firearm following its importation for the purpose of commercial sale within the importing country, or permanent private importation, so that the source of the firearm can be traced; and

"*(c)* Require the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

"[... The firearms referred to in article II, subparagraph *(c)* (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.][6]

"2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings."[7]

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article IX
"Marking of firearms[8, 9]

"1. For the purposes of identifying and tracing firearms, [referred to in article II, subparagraph *(c)* (i), of this Protocol,][10] States Parties shall:

"*(a)* Require,[11] at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its [serial number];[12]

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[3]Japan suggested that there was a need to define the period for marking imported firearms (e.g. the period during which they passed through customs or during which they were legally obtained by the final recipient) (see A/AC.254/5/Add.1 and Corr.1).

[4]Addition proposed by the United States (see A/AC.254/5/Add.1 and Corr.1).

[5]Alternative proposed by Japan and the United Kingdom (see A/AC.254/5/Add.1 and Corr.1), which was taken from the action plan recommended by the Senior Experts Group on Transnational Organized Crime.

[6]Additional paragraph proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[7]South Africa suggested including the words "developing effective and inexpensive measures to mark firearms" (see A/AC.254/5/Add.5).

[8]Germany entered a reservation on this article to allow for more specific comments to be made as negotiations proceeded, pending further study. However, the importance of this article was stressed by many other delegations and there was general agreement on both the need for marking and the inclusion of the article in the draft protocol.

[9]The United States suggested that inputs should be sought from experts on the technical issues, including those on marking, which was supported by Australia, Ecuador, Norway, the Philippines, Saudi Arabia, Switzerland, Tunisia and Turkey. The United States stressed that discussion by experts would not be a drafting exercise. Cuba suggested that the expertise developed in the Panel of Governmental Experts on Small Arms established pursuant to General Assembly resolution 50/70 and in the Department of Disarmament Affairs of the Secretariat might be also utilized. The United States suggested that inputs should also be sought from relevant non-governmental organizations and the firearm manufacturing industry.

[10]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1), supported by the Holy See.

[11]The requirement for marking at the time of manufacture was generally agreed upon.

[12]On the type of information contained in the marking at the time of manufacture, the United Kingdom proposed to include "the year of manufacture", and suggested to clarify the meaning of the words "place of manufacture" (see A/AC.254/5/Add.1 and Corr.1). Argentina proposed to include the "model number", in addition to the serial number. New Zealand proposed to replace the words "serial number" with "unique identifier". China proposed to delete the words "name of manufacturer". Switzerland suggested that the marking requirement should not be overloaded.

"*(b)* Require[13] appropriate markings on each imported firearm[14] [following its importation for the purpose of commercial sale within the importing country, or permanent private importation],[15] permitting the identification of the importer's name and address [and an individual serial number if the firearm does not bear one at the time of import][16] [so that the source of the firearm can be traced];[17] and

"*(c)* [Require][18] the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

"[1 bis The firearms referred to in article II, subparagraph *(c)* (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.]

"2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings."[19, 20]

Notes by the Secretariat

1. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of the Ad Hoc Committee, regarding subparagraph 1 *(a)* of article IX, there were no objections to marking firearms at the time of their manufacture. Some participants suggested that the markings should at least contain the name of the manufacturer, the place of manufacture and the serial number of the firearm, as those were essential to law enforcement. One participant suggested that ammunition could and should be marked. Regarding subparagraph 1 *(b)*, some participants recognized the value of marking firearms at the time of their import, while others questioned the modalities. In particular, some participants discussed at what point the marking would be done, that is, before or after import. One participant noted the challenges facing the European Union, given the treaty on the free movement of goods in that region. The practical challenges and the necessity of marking at import were also discussed. Criminal liability for unmarked firearms was also raised by one participant, who noted that the importer was criminally liable for unmarked firearms. Regarding subparagraph 1 *(c)*, some participants questioned whether marking was

[13]Many delegations, including those of Kuwait, the Libyan Arab Jamahiriya, New Zealand, Portugal, the Republic of Korea, Saudi Arabia, the United Kingdom and the United States, as well as the representatives of the Customs Cooperation Council (also known as the World Customs Organization) and the International Criminal Police Organization (Interpol), supported the requirement of marking at the time of import. China and France were of the opinion that further consideration was needed.

[14]Japan suggested that there was a need to define the period for marking imported firearms (e.g., the period during which they passed through customs or during which they were legally obtained by the final recipient) (see A/AC.254/5/Add.1 and Corr.1).

[15]Addition proposed by Japan and the United Kingdom (see A/AC.254/5/Add.1 and Corr.1), supported by Croatia, the Philippines, Portugal, Saudi Arabia and Tunisia. The Holy See, New Zealand, Nigeria, Qatar and the Republic of Korea expressed their preference for not including this phrase so that marking would be required regardless of the purpose of import.

[16]Addition proposed, as indicated above, by the United States (see A/AC.254/5/Add.1 and Corr.1). The Holy See proposed the deletion of this phrase.

[17]Addition proposed, as indicated above, by Japan and the United Kingdom (see A/AC.254/5/Add.1 and Corr.1). New Zealand requested clarification of the word "source".

[18]The Libyan Arab Jamahiriya, the Netherlands and Saudi Arabia supported the requirement for marking confiscated firearms. France was of the opinion that further consideration was needed. The Netherlands proposed replacing the word "require" with the word "ensure".

[19]The importance of there being an inexpensive way of marking was mentioned by Pakistan. Saudi Arabia made a suggestion to include a reference to "forged or counterfeited marking". That suggestion was supported by Colombia.

[20]Other issues discussed in relation to this article included: *(a)* a need for an international database on firearm manufacturers (suggested by Argentina and supported by Colombia, Ecuador, Nigeria, Portugal and Ukraine); *(b)* a need for a universally compatible marking system (suggested by the Netherlands and supported by Portugal, Switzerland and Ukraine); and *(c)* a need for marking ammunition (suggested by Colombia, Turkey and Ukraine). While expressing its support for marking, China expressed the view that the difference of marking methods in each region needed to be taken into account in developing this article.

necessary for confiscated weapons, which did not re-enter the civilian market. One participant drew attention to the advantages of stamp marking in terms of its technical feasibility, its cost-effectiveness and its resistance to criminal obliteration. The deliberations of the Technical Session on this article are reflected in the report of the Chairman (A/AC.254/L.86, paras. 18-22).

2. At the fifth session of the Ad Hoc Committee, Finland submitted a paper arguing that the requirement to mark all imported firearms with the name and address of the importer could cause particular problems in respect of costs and legal trade of firearms. It could also cause problems related to the European Community legislation concerning free trade and movement of goods in the European Union. Imported firearms not carrying proper markings should therefore be required to be marked only with the identification number, the land code of the importing country and the year of import (see A/AC.254/CRP.22).

Seventh session: 17-28 January 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 9 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.3, which was the same as that contained in document A/AC.254/4/Add.2/Rev.2.

Rolling text (A/AC.254/4/Add.2/Rev.4)

"Article 9
"Marking of firearms

"1. For the purposes of identifying and tracing firearms, [referred to in article 2, subparagraph *(c)* (i), of this Protocol,] States Parties shall:[21]

"*(a)* Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its [serial number];

"[*(b)* Require[22] appropriate markings on each imported firearm [following its importation for the purpose of commercial sale within the importing country, or permanent private importation], permitting the identification of the importer's name and address [and an individual serial number if the firearm does not bear one at the time of import] [so that the source of the firearm can be traced]; and

"*(c)* [[Require] the appropriate marking of any firearm confiscated or forfeited pursuant to article 7 of this Protocol that is retained for official use.[23, 24]

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[21]At the seventh session of the Ad Hoc Committee, the United States proposed replacing the opening words with the words "States Parties shall adopt the following measures to mark commercially manufactured firearms". That proposal was opposed by most delegations as a weakening of the marking requirement.

[22]At the seventh session of the Ad Hoc Committee, the United Arab Emirates proposed that firearms transferred across borders should be marked by exporters instead of importers.

[23]At the seventh session of the Ad Hoc Committee, Japan proposed adding at the end of this subparagraph the words "except authorized samples".

[24]At the seventh session of the Ad Hoc Committee, there were further discussions about whether to mark firearms only at the time of manufacture or again as set out in subparagraphs *(b)* and *(c)*. Many delegations expressed concern about the costs and technical feasibility of the additional marking requirement, but it was considered that further discussions would be needed to resolve the issue.

"[*(d)* Require, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate marking of the place of transfer and serial number.][25]

"[1 bis The firearms referred to in article 2, subparagraph *(c)* (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.]

"2. States Parties shall encourage the firearm manufacturing industry to develop measures to guard against the removal[26] of markings."

Eleventh session: 2-28 October 2000

Notes by the Secretariat

4. Delegations based their comments on the text of article 9 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.5, which was the same as that contained in document A/AC.254/4/Add.2/Rev.4.

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 9
"Marking of firearms[27]

"1. For the purposes of identifying and tracing firearms, [referred to in article 2, subparagraph *(b)* (i), of this Protocol,][28] States Parties shall:

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[25]This text was proposed by Norway at the seventh session of the Ad Hoc Committee (see A/AC.254/L.142). Many delegations reserved their positions pending further review. Some delegations argued that if government firearms were marked at manufacture, it would not be necessary to re-mark them at the time of their transfer to civilian hands.

[26]At the seventh session of the Ad Hoc Committee, France suggested that the word "complete" should be added before the word "removal", noting that criminals would adopt technical developments of their own to remove markings and elude tracing.

[27]At the eleventh session of the Ad Hoc Committee, there were extensive discussions on the marking requirements and in particular on the nature of the markings to be applied and the extent to which the requirements would apply to firearms manufactured exclusively for the military or security forces of the States parties involved. During the session, recommendations were received from an informal working group (see A/AC.254/L.266); the Vice Chairman (see A/AC.254/L.271); the European Commission (see A/AC.254/L.275, superseding proposals by the European Commission, contained in document A/AC.254/L.260, and Canada, contained in document A/AC.254/L.264). On the final day of the session, a further proposal was made by the Chairman of the Ad Hoc Committee (see A/AC.254/4/Add.2/Rev.6, annex). Most delegations agreed that there should be some form of appropriate unique marking applied to all firearms at the time of manufacture. The issues still under discussion involved the question of whether a different standard would apply to firearms manufactured exclusively for a State party's military or security forces, the exact format or content of markings to be applied and whether those markings should be able to be read or interpreted by anyone or only by the authorities of the State where the firearm was manufactured.

[28]This provision would limit the mandatory marking requirement to conventional firearms within subparagraph *(b)* (i) of the definition in article 2, excluding the destructive devices defined as firearms by subparagraph *(b)* (ii). At the eleventh session of the Ad Hoc Committee, an informal working group recommended the deletion of subparagraph *(b)* (ii), which would make the text in square brackets unnecessary (see A/AC.254/L.268). The Islamic Republic of Iran proposed to delete all references to destructive devices (see A/AC.254/L.273). On the final day of the eleventh session, the Chairman proposed a number of changes to address all of the major issues that remained unresolved (see A/AC.254/4/Add.2/Rev.6, annex). His proposals included the deletion of all references to destructive devices from the draft protocol and were still under discussion when the eleventh session was adjourned.

"*(a)* Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its [serial number];[29]

"[*(b)* Require appropriate markings on each imported firearm [following its importation for the purpose of commercial sale within the importing country, or permanent private importation], permitting the identification of the importer's name and address [and an individual serial number if the firearm does not bear one at the time of import] [so that the source of the firearm can be traced];[30] and

"*(c)* [[Require] the appropriate marking of any firearm confiscated or forfeited pursuant to article 7 of this Protocol that is retained for official use;][31]

"[*(d)* Require, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate marking of the place of transfer and serial number.][32]

"[1 bis The firearms referred to in article 2, subparagraph *(b)* (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.][33]

"2. States Parties shall encourage the firearm manufacturing industry to develop measures to guard against the removal of markings."

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[29]At the eleventh session of the Ad Hoc Committee, the format and content of markings to be applied were discussed extensively and remained one of the issues still open when the meeting adjourned. A number of proposals were made to describe the markings for all firearms, imported firearms or firearms produced exclusively for a State party's military or security forces. These included "the codes used to identify the country and factory of origin, the year of production, the lot number and the calibre" (Colombia, see A/AC.254/L.247); "serial number" (European Commission, see A/AC.254/L.260); "serial number or unique numeric code" (Canada, see A/AC.254/L.264); "serial number or any other unique alphanumeric code" (Mexico); "unique numeric or alphanumeric marking" (working group, see A/AC.254/L.266, and Vice-Chairman, see A/AC.254/L.271); "unique markings permitting ready identification" (Vice Chairman, see A/AC.254/L.271); and "appropriate unique marking" or "appropriate simple marking" (Chairman, see A/AC.254/4/Add.2/Rev.6, annex).

[30]Many delegations supported the idea of requiring additional marking at the time of import, but concerns remained about the costs and practicality of this and about who (importers, exporters or government agencies) would actually do the marking. At the eleventh session of the Ad Hoc Committee, there was further discussion of import marking. Generally, the position of some delegations that import marking was unnecessary or impracticable were contingent on the establishment of a clear obligation to mark all firearms in a "user friendly" way at the time of manufacture. This was seen as preferable in order to ensure that any firearms subsequently diverted from state control would previously have been marked. If the protocol did not require user friendly marking or did not apply to firearms made exclusively for a State party's military or security forces at the time of manufacture, many of the delegations that would otherwise regard import marking as unnecessary would then see it as necessary and proposals that would make it more practicable were considered. These included limiting the requirement to firearms imported for commercial sale or permanent private retention and firearms that had not been previously marked (European Commission, see A/AC.254/L.260) and limiting the content of import marking and exempting temporary imports completely (informal working group, see A/AC.254/L.266; Vice Chairman, see A/AC.254/L.271; and Chairman, see A/AC.254/4/Add.2/Rev.6, annex).

[31]At the eleventh session of the Ad Hoc Committee, an informal working group set up to recommend changes to article 9 recommended the deletion of this provision (see A/AC.254/L.266). That proposal was incorporated into subsequent proposals, which did not find consensus for other reasons (Vice Chairman, see A/AC.254/L.271; and Chairman, see A/AC.254/4/Add.2/Rev.6, annex).

[32]At the eleventh session of the Ad Hoc Committee, there was general support for the principle of ensuring that firearms transferred from government stocks to private circulation were marked in such a way as to identify the transferring State party and the individual firearm involved. The major issue still open, as with other paragraphs of this article, involved the exact format and content of the markings to be applied to such firearms. New proposals for this paragraph appeared in documents A/AC.254/L.260 (European Commission); A/AC.254/L.264 (Canada); A/AC.254/L.266 (working group); A/AC.254/L.271 (Vice Chairman); and A/AC.254/4/Add.2/Rev.6, annex (Chairman).

[33]See footnote 28 above.

Proposal by the Chairman of the Ad Hoc Committee (A/AC.254/4/Add.2/Rev.6, annex)

The Chairman of the Ad Hoc Committee proposed that article 9 (Marking of firearms) should be replaced with the following text:[34]

"Article 9
"Marking of firearms

"1. For the purpose of identifying and tracing firearms, States Parties shall:

"*(a)* Require, at the time of manufacture of each firearm, appropriate unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number or any alternative appropriate unique marking permitting ready identification by all States Parties of the country of manufacture and enabling the competent authorities of the latter country to trace the firearm;

"Option 1

"*(a)* bis Ensure that any firearm not manufactured for the use of a State Party's own army or security forces is marked with appropriate unique markings providing the name of the manufacturer, the country or place of manufacture and the serial number;

"Option 2

"*(a)* bis Ensure that any firearm manufactured for the use of a State Party's own army or security forces is marked in accordance with subparagraph *(a)* of this article;

"*(b)* Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique numeric or alphanumeric marking, if the firearm does not bear such a marking;

"*(b)* bis The requirements of subparagraph *(b)* of this paragraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

"*(c)* Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country and including a numeric or alphanumeric code.

"2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings."

[34]On the final day of the eleventh session of the Ad Hoc Committee, this text was produced by the Chairman of the Ad Hoc Committee with a view to resolving the major outstanding issues, including those related to article 9 of the draft protocol. The original text was produced and distributed informally in English only during the discussions. It was subsequently read out by the Secretariat in a modified form and a further informal document was produced, with two options for article 9, paragraph 1 *(a)* bis, to illustrate the differences between the two variations. The text of the annex is based on the latter informal document, with the two options for article 9, paragraph 1 *(a)* bis, retained. The proposed revision of article 9 would include the deletion of subparagraph *(c)* as well as revision of the other subparagraphs of paragraph 1. To facilitate comparison with the previous text and in session proposals, the remaining subparagraphs have not been renumbered.

Twelfth session: 26 February-2 March 2001

Notes by the Secretariat

5. At its twelfth session, the Ad Hoc Committee considered the content of article 9 of the draft protocol, which was one of the outstanding issues that remained to be resolved. The relevant discussions and consultations took into consideration the proposal of the Chairman reproduced above (see A/AC.254/4/Add.2/Rev.6, annex), as well as the following documents:

Proposal of Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Czech Republic, Ecuador, Guatemala, Haiti, Jamaica, Mexico, New Zealand, Norway, Switzerland, Trinidad and Tobago, United States of America, Uruguay and the European Commission*[35] *(A/AC.254/L.278)

The sponsors proposed to replace article 9 with the following text:

"Article 9
"Marking of firearms

"1. For the purpose of identifying, recording and tracing firearms:

"*(a)* States Parties shall require[36] at the time of manufacture of each firearm a marking permitting ready identification by all States Parties of the country of manufacture and a unique numeric or alphanumeric marking;[37] States Parties may also include any other information that they consider appropriate;[38]

"*(b)* States Parties shall require appropriate simple marking on each imported firearm, permitting identification of the country of import and where possible the year of import, and a unique numeric or alphanumeric marking, if the firearm does not bear such a marking;[39]

"*(c)* The requirements of subparagraph *(b)* of this paragraph need not be applied to the temporary import of firearms for verifiable lawful purposes;

"*(d)* States Parties shall ensure, at the time of permanent transfer of a firearm out of government stocks, a marking permitting ready identification by all States Parties of the transferring country and a unique numeric or alphanumeric marking.

"2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings."

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[35]On behalf of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland. The representative of Sweden, speaking on behalf of the States members of the European Union that are Members of the United Nations, informed the Ad Hoc Committee that the European Commission had been mandated by the Council of the European Union to negotiate article 9 on the marking of firearms of the draft protocol on behalf of all 15 States members of the European Community. The Chairman stated that the Ad Hoc Committee would take note of the statement on the understanding that the mandate would not affect the observer status of the European Commission (see A/55/383/Add.2, para. 14).

[36]It is understood that the words "States Parties shall require" as used in subparagraphs *(a)* and *(b)* of this paragraph would include States requiring private manufacturers and, in the case of subparagraph *(b)*, private importers or exporters to apply the required markings.

[37]It is understood that "alphanumeric marking" could include the name of the manufacturer plus a serial number.

[38]"Other information" could be coded or in the form of symbols or inscriptions.

[39]It is understood that markings on imported firearms could be applied either prior to or following import.

Amendments to the proposals made by the Chairman of the Ad Hoc Committee at its eleventh session (A/AC.254/L.281)

The Chairman of the Ad Hoc Committee proposed that article 9 should be replaced with the following text:

"Article 9
"Marking of firearms

"1. For the purpose of identifying and tracing firearms, States Parties shall:

"*(a)* Require, at the time of manufacture of each firearm, appropriate unique marking providing the country or place of manufacture, the name of the manufacturer and the serial number;

"*(b)* Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking;

"*(c)* The requirements of subparagraph *(b)* of this paragraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

"*(d)* Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

"2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings."

Notes by the Secretariat

6. At its twelfth session, the Ad Hoc Committee considered, finalized and approved article 9 of the draft protocol, as amended. It was placed together with articles 8, 10 to 12, 14 and 15 of the draft protocol into one chapter entitled "Prevention", on the basis of the proposals made by the Chairman of the Ad Hoc Committee at the eleventh session (see A/AC.254/4/Add.2/Rev.6, annex, para. 1). The last amendments are reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000.

7. The representatives of Benin and Nigeria requested that the report of the Ad Hoc Committee on its twelfth session should indicate their reservations on article 8, because of its vagueness regarding the marking of firearms. The representative of Azerbaijan requested that the report of the Ad Hoc Committee on its twelfth session should indicate that his Government had reserved its right to make reservations regarding article 8, paragraphs 1 *(b)* and *(c)*, of the draft protocol. The representative of the Syrian Arab Republic requested that the report of the Ad Hoc Committee on its twelfth session should reflect his Government's reservations regarding article 8 of the draft protocol. The representative of the Libyan Arab Jamahiriya requested that the report of the Ad Hoc Committee on its twelfth session should reflect his Government's reservations regarding article 8 of the draft protocol. The representative of Haiti requested that the report of the Ad Hoc Committee on its twelfth session should reflect her Government's preference for a formulation of

article 8 of the draft protocol that would require on each firearm marking that would provide the country and place of manufacture, the name of the manufacturer and the serial number. The representative of the United States requested that the report of the Ad Hoc Committee on its twelfth session should indicate that her Government reserved its position on article 8, paragraph 1, of the draft protocol, but would not block the submission of the approved text to the General Assembly for adoption. With regard to article 8 of the draft protocol, the United States believed that a number of useful proposals that would have clarified the text of paragraph 1 *(a)* of that article had not been given adequate consideration by the Ad Hoc Committee. At a minimum, the United States believed that the *travaux préparatoires* should reflect the common understanding that the provision of article 8, paragraph 1 *(a)*, that read "maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code" was intended to apply only to those countries which were currently using a marking system that included symbols as part of its unique identifier and, further, that such countries would, in most cases, mark the firearm with the name of the country of manufacture and a simple geometric symbol in combination with a serial number. The observer for the European Commission requested that the report of the Ad Hoc Committee on its twelfth session should reflect his statement on behalf of the European Community on article 8 of the draft protocol. The observer had requested the inclusion of the word "system" before the words "with simple geometric symbols" in article 8, paragraph 1 *(a)* of the draft protocol. The observer had proposed that amendment in order to clarify the text and the addition had no effect on the meaning of the phrase. The observer had also requested the addition of the words "and of the individual firearm" at the end of paragraph 1 *(a)* of article 8 in order to avoid an erroneous interpretation of that paragraph. According to the observer, the unique marking of firearms was aimed at identifying in a unique way each firearm, while at the same time permitting the ready identification of the country of manufacture, and should not be understood as being aimed only at the ready identification of the country of manufacture. See also article 3 of the present protocol for the statement made by Turkey before the approval of the draft protocol, in which he highlighted, inter alia, that his Government had been insisting throughout the negotiation process on an effective marking system not only for firearms, but also for their parts and components and ammunition. His Government had made several proposals to improve the text, but it had not been possible to achieve consensus on including parts and components of firearms within the marking system.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 8
Marking of firearms

1. For the purpose of identifying and tracing each firearm, States Parties shall:

(a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture;

(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import

and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

(c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings.

Notes by the Secretariat

8. There was one technical amendment made orally by the Chairman of the Ad Hoc Committee at the fifty-fifth session of the General Assembly when introducing the firearms protocol. In the lead sentence of paragraph 1, the word "firearms" was replaced by the words "each firearm". The Assembly adopted the protocol as orally amended.[40]

[40]See *Official Records of the General Assembly, Fifty-fifth session, Plenary Meetings, 101st meeting*, agenda item 105.

Article 9. Deactivation of firearms

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article X
"Preventing the reactivating of deactivated firearms

"States Parties that have not already done so shall consider taking the necessary measures to prevent the reactivating of deactivated firearms, including through criminalization, if appropriate."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"[Article X
"Preventing the reactivating of deactivated firearms

"States Parties that have not already done so shall consider taking the necessary measures to prevent the reactivating of deactivated firearms, including through criminalization, if appropriate.[1]]"[2]

Notes by the Secretariat

1. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of the Ad Hoc Committee, there was considerable discussion concerning this article, whereby a number of participants supported the establishment of a minimum standard of deactivation. One participant noted that a definition and standard of deactivation could be included in the draft protocol. Another participant suggested that deactivated firearms could be regulated as parts and components. Another participant noted that domestic legislation could be introduced to criminalize the reactivation of deactivated firearms. It was noted that records

[1]The United Kingdom of Great Britain and Northern Ireland suggested identifying and agreeing to a certain standard in the text of the protocol instead of simply committing to "considering taking the necessary measures to prevent the reactivating of deactivated weapons" (see A/AC.254/5/Add.1 and Corr.1).

[2]Mexico proposed the deletion of this article (see A/AC.254/5/Add.1 and Corr.1).

on deactivated firearms were kept in several jurisdictions. The deliberations of the Technical Session are reflected the report of the Chairman (A/AC.254/L.86, para. 26).

2. The version of this article contained in document A/AC.254/4/Add.2/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2 and 3).

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.2/Rev.4)

"[Article 10
"Preventing the reactivating of deactivated firearms[3]

"States Parties that do not recognize a deactivated weapon as a firearm in accordance with domestic law shall take the necessary measures, including the creation of specific criminal offences, if appropriate, to prevent the reactivation of deactivated firearms, consistent with the general principles of deactivation set out below:

"*(a)* While retaining, as far as is practicable, the aesthetic outer appearance of the firearm, all essential parts of the firearm are to be rendered permanently inoperable and incapable of being removed for replacement parts or other modifications that might permit the firearm to be reactivated in any way;

"*(b)* Arrangements are to be made for deactivation measures to be certified by a designated proof house (or other appropriate authority) to verify that the modifications made to a firearm meet the relevant standard for that type of firearm;

"*(c)* Certification by the proof house (or other appropriate authority) must include a clearly visible and identifying mark on the firearm and issuance of a certificate recording the deactivation that includes the make, model and serial number of the firearm.]"

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 10
"Deactivation of firearms[4]

"States Parties that do not recognize a deactivated firearm as a firearm in accordance with domestic law shall take the necessary measures, including the creation of specific criminal offences if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the general principles of deactivation set out below:

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[3]This new text was proposed by the United Kingdom at the seventh session of the Ad Hoc Committee (see A/AC.254/L.143) and was adopted, pending in-depth consultation, as the basis for future discussion. A number of delegations sought clarification of the term "deactivated firearms". The United Kingdom indicated that the term referred to firearms that had been intentionally rendered inoperable to a high degree of permanence and did not include firearms that had been decommissioned for storage or similar purposes or firearms in need of repair.

[4]New text for this article was proposed by the United Kingdom at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.158). Brazil suggested that the proposed text of subparagraph *(c)* should be amended by replacing the words "visible and identifying mark" with the words "visible identifying mark" and there was agreement that the consultations should recommend adoption of the text for the purposes of final discussion as amended. It was then agreed that the consultations should advise that the proposed definition of the term "deactivated firearm" in document A/AC.254/L.169 was not necessary and should not be included in the text.

"*(a)* All essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of being removed, replaced or modified so as to permit the firearm to be reactivated in any way;

"*(b)* Arrangements are to be made for deactivation measures to be verified, where appropriate, by a competent authority to ensure that the modifications made to a firearm render it permanently inoperable;

"*(c)* Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible identifying mark stamped on the firearm."

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 10
"Deactivation of firearms

"A State Party that does not recognize a deactivated firearm as a firearm in accordance with its domestic law shall take the necessary measures, including the establishment of specific offences if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the following general principles of deactivation:

"*(a)* All essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way;

"*(b)* Arrangements are to be made for deactivation measures to be verified, where appropriate, by a competent authority to ensure that the modifications made to a firearm render it permanently inoperable;

"*(c)* Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered and finalized article 10 of the draft protocol without further amendment. The article was placed together with articles 8, 9, 11, 12, 14 and 15 of the draft protocol into one chapter entitled "Prevention", on the basis of the proposals made by the Chairman of the Ad Hoc Committee (see A/AC.254/4/Add.2/Rev.6, annex, para. 1). The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 9
Deactivation of firearms

A State Party that does not recognize a deactivated firearm as a firearm in accordance with its domestic law shall take the necessary measures, including the establishment of specific offences if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the following general principles of deactivation:

(a) All essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way;

(b) Arrangements are to be made for deactivation measures to be verified, where appropriate, by a competent authority to ensure that the modifications made to a firearm render it permanently inoperable;

(c) Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm.

Article 10. General requirements for export, import and transit licensing or authorization systems

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XI
"General requirements for export, import and transit licensing or authorization systems

"1. States Parties shall establish and maintain an effective system of export, import and international transit licensing or authorization for transfers of firearms, ammunition and other related materials.

"2. States Parties shall not permit the transit of firearms, ammunition and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

"3. States Parties, before releasing shipments of firearms, ammunition and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

"4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition and other related materials."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article XI
"General requirements for export, import and transit licensing or authorization systems[1]

"1. States Parties shall establish or maintain an effective system of export, import and international transit licensing or authorization for the transfer of firearms, ammunition[, explosives][2] and other related materials.

"Option 1

"2. States Parties shall not permit the transit[3] of firearms, ammunition[, explosives][2] and other related materials until the receiving State Parties issue the corresponding licences or authorizations.

"Option 2[4]

"2. State Parties, before issuing export licences or authorizations for the shipment of firearms, ammunition and other related materials for export, shall verify that the importing and transit States have issued licences or authorizations. Each export, import and in-transit licence or authorization shall contain the same information, which at a minimum shall identify the country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the article.

"Option 1

"3. States Parties, before releasing shipments of firearms, ammunition[, explosives][2] and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

"Option 2[4]

"3. States Parties, before issuing in-transit licences or authorizations and permitting the transit of firearms, ammunition and other related materials, shall verify that the receiving States Parties have issued the corresponding import licences or authorizations.

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[1]Japan suggested that recognition should also be imposed in the case of import from, export to and transit through non-States parties, with a view to reducing detour exports (see A/AC.254/5/Add.1 and Corr.1).

[2]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[3]Japan noted that "transit" should be clearly defined, since it would not be appropriate to impose obligations on a State party in the following cases: aircraft merely flying over the territory of the State party; a ship making innocent passage through territorial waters; aircraft in transit through an airport of the State party; or a ship in transit through the seaport of the State party. Japan also suggested that, in setting up structures based on this paragraph, full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law (see A/AC.254/5/Add.1 and Corr.1).

[4]Alternative proposed by the United States (see A/AC.254/5/Add.1 and Corr.1) and supported by South Africa (see A/AC.254/5/Add.5).

"4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition[, explosives][2] and other related materials.[5]

"[... Written approval from the exporting country must be obtained before a State Party may authorize the re-export, retransfer, trans-shipment or other disposition of firearms to any end-user, end use or destination other than as stated on the export licence or authorization.]"[6]

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article XI
"General requirements for export, import and transit licensing or authorization systems[7, 8]

"1. States Parties shall establish or maintain an effective system of export, import and international transit licensing or authorization[9] for the transfer of firearms, ammunition [, explosives] and other related materials.[10]

"Option 1[11]

"2. States Parties, before issuing export licences or authorizations for the shipment of firearms, ammunition and other related materials for export, shall verify that the importing and transit[12] States have issued licences or authorizations. Each export, import and in-transit licence or authorization shall contain the same information, which at a minimum shall identify the country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the article.

"Option 2[13]

"2. States Parties, before releasing shipments of firearms, ammunition [, explosives] and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

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[5]Japan suggested that the meaning of the words "upon request", "receipt" and "inform" should be clearly stated (see A/AC.254/5/Add.1 and Corr.1).

[6]Addition proposed by the United States (see A/AC.254/5/Add.1 and Corr.1).

[7]The importance of this article was stressed by many delegations and the need for export and import control was generally agreed upon. However, the Netherlands expressed its hesitations about including a provision on trade control in the draft protocol, whose purpose would be to promote law enforcement cooperation. The Netherlands expressed reservations regarding this article, in particular because of the concern regarding the compatibility of this article with the trade rules of the European Union.

[8]Many delegations, including Italy, Japan and the United Kingdom of Great Britain and Northern Ireland, suggested that inputs should be sought from experts on the technical issues of import, export and transit control.

[9]The Netherlands sought clarification on the difference between the terms "licences" and "authorizations". It was suggested by the United States that the term "licence and authorization" should stand for authorizations, which would include both authorization over a period and one-instance authorization.

[10]The requirement for an export and import licensing or authorization system was generally agreed upon.

[11]Alternative (formerly paragraph 2, option 2) proposed by the United States (see A/AC.254/5/Add.1 and Corr.1) and supported by Croatia, the Holy See, Kuwait, the Netherlands, Norway, the Philippines, South Africa (see A/AC.254/5/Add.5) and Tunisia.

[12]The Netherlands was of the opinion that the inclusion of transit control would make the scope of the regulation too broad.

[13]Original text (formerly paragraph 3, option 1), which was supported by Italy (with reservation), Pakistan and Turkey.

"Option 1[14]

"3. States Parties shall not permit the transit[15] of firearms, ammunition [, explosives] and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

"Option 2[16]

"3. States Parties, before issuing in-transit licences or authorizations and permitting the transit of firearms, ammunition and other related materials, shall verify that the receiving States Parties have issued the corresponding import licences or authorizations.

"4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition [, explosives] and other related materials.

"[5. Written approval from the exporting country must be obtained before a State Party may authorize the re-export, retransfer, trans-shipment or other disposition of firearms to any end-user, end use or destination other than as stated on the export licence or authorization.]"[17, 18]

Notes by the Secretariat

1. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of the Ad Hoc Committee, the need for an effective import and export system was generally agreed upon. With regard to export authorizations, option 1 was broadly supported. There were questions raised with respect to how transfers and trans-shipments would take place within the European Union and between European Union member States and States outside the European Union. Participants stated that there was no free circulation of firearms within the European Union, that exports were accompanied by transfer authorizations and that transit shipments were accompanied by routing slips. It was noted that not all shipments within the European Union were subject to a dual authorization regime. The deliberations of the Technical Session are reflected in the report of the Chairman (see A/AC.254/L.86, paras. 24 and 25).

2. At the fifth session of the Ad Hoc Committee, Finland submitted a paper arguing that the information exchange system under the Council of the European Communities directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of

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[14]Original text (formerly paragraph 2, option 1), which was supported by Italy, Pakistan and Turkey.

[15]The Republic of Korea shared the concerns noted by Japan (see footnote 3 above). Australia and the Netherlands also noted the need to clarify the meaning of the term "transit".

[16]Alternative (formerly paragraph 3, option 2) proposed by the United States (see A/AC.254/5/Add.1 and Corr.1), which was supported by South Africa (see A/AC.254/5/Add.5). Croatia, Kuwait and the Philippines also supported this option.

[17]Addition proposed by the United States (see A/AC.254/5/Add.1 and Corr.1) and supported by the Holy See, Italy, the Philippines and Turkey. China, Pakistan and the Republic of Korea proposed the deletion of this paragraph. The Netherlands suggested that such approval on re-export should not be obligatory unless the exporting country requested it. Nigeria proposed that re-exporting countries should submit written explanations indicating why and to whom the firearms would be re-exported.

[18]As indicated above, Japan suggested that recognition should also be imposed in the case of import from, export to and transit through non-States parties, with a view to reducing detour exports (see A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the Republic of Korea.

weapons should be used in the protocol as the basis of the control mechanism concerning export, import and transit licensing or authorization. Thus, a prior written consent from the target country's competent authority, stating that there was no obstacle to the importation of the objects in terms of their type, the amount of the imported goods, the importer and the end-user, should be the precondition for the issuance of an export licence for firearms and other objects that met the definition. In addition, the authority of the exporting country should always give a separate notification of the export to the authority of the importing country. All the information should be exchanged directly between authorities and within a very short timeframe in order to carry out efficient supervision (see A/AC.254/CRP.22).

Seventh session: 17-28 January 2000

Notes by the Secretariat

3. Delegations based their comments on the text of article 11 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.3, which was the same as that contained in document A/AC.254/4/Add.2/Rev.2.

Rolling text (A/AC.254/4/Add.2/Rev.4)

"Article 11
"General requirements for export, import and transit licensing or authorization systems[19]

"1. States Parties shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit,[20] for the transfer of firearms, their parts and components and ammunition.

"Option 1

"2. States Parties, before issuing export licences or authorizations for [commercial][21] shipments of firearms, their parts and components and ammunition, shall verify that:

"Option 2

"2. [States Parties issuing export licences or authorizations for commercial shipments of firearms, their parts and components and ammunition shall not permit exports until:]

[19]The text of this article was approved for the purposes of further discussion, based on the recommendation of a working group at the seventh session of the Ad Hoc Committee. Colombia proposed additional text for this article dealing with appropriate documentation required (see A/AC.254/5/Add.18 below). Mexico asked that this proposal should be considered as a possible annex.

[20]The working group at the seventh session of the Ad Hoc Committee was of the view that there was a need for a definition of the term "transit" to be inserted in article 2. It might be possible to adapt a definition from the rules of the Customs Cooperation Council (also known as the World Customs Organization).

[21]The working group noted that the word "commercial" was a term of art among customs agencies in various countries, where it was used to refer to transactions that were not bona fide non-commercial transactions. A number of delegations favoured the deletion of the word. The working group noted that the protocol would not preclude States parties from developing more stringent domestic rules.

"*(a)* The importing States have issued import licences or authorizations; and

"*(b)* [Whenever there is transit] [Where applicable], the transit States have at least given notice in writing that they have no objection to the transit.

"3. The export and import licence or authorization [and accompanying documentation together] shall contain information that, at a minimum, shall identify the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, the description and quantity of the firearms, their parts and components and ammunition and [, whenever there is transit,] [, where applicable,] the transit States, [[whenever there is the involvement of any person described in article 18 bis of this Protocol] the involvement of any person described in article 18 bis, of this Protocol.] The information contained in the import licence must be provided in advance to the transit States.[22]

"4. The shipment shall, at all times, be accompanied by an official routing document provided by the exporter or his or her agent that, at a minimum, shall contain the above-mentioned information. This document shall be made available whenever the transit States Parties so require and, wherever applicable, shall be marked by the transit States Parties before the shipment leaves their respective territories.

"5. The importing State Party shall inform the exporting State Party, upon request, of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

"[[6. Written approval from the exporting State must [may][23] be obtained before a State Party may authorize the re-export [, retransfer, trans-shipment or other disposition][24] of firearms to any end-user,[25] end use or destination other than that stated on the export licence or authorization.]

"7. States Parties shall, within available means, adopt such measures as may be necessary to ensure that licensing or authorization documents are of such quality that they cannot readily be unlawfully altered, replicated, issued or otherwise misused.[26]

"8. [States Parties may adopt simplified [export, import] licensing or authorization procedures in cases involving the temporary transfer of firearms, their parts and components and ammunition, for the verifiable purpose of hunting, sport shooting, exhibitions or repairs.]"[27, 28]

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[22]During the discussion in the working group, one delegation expressed the view that the export State should provide the transit States with the information contained in the import licence. Another suggested that that should be done by the exporter.

[23]At the seventh session of the Ad Hoc Committee, Turkey proposed replacing the word "must" with the word "may".

[24]Deletion proposed by the United States at the seventh session of the Ad Hoc Committee.

[25]At the seventh session of the Ad Hoc Committee, many delegations expressed concern about the viability of this proposal and its implications for the sovereignty of States parties. Other delegations pointed out that the value of "end user" controls was that, as a further control on trafficking, States parties would be able to apply such controls to prevent weapons exported by them from eventually falling into the hands of potential enemies.

[26]The text of this paragraph is based on a proposal submitted by Norway at the seventh session of the Ad Hoc Committee (see A/AC.254/L.142).

[27]The working group noted that, if the word "commercial" was deleted from the first line of paragraph 2 of this article, the text of this provision would have to be inserted to take into account subparagraph *(h)* of the preamble, which referred to the interests of hunters, sport shooters and other recreational activities involving firearms.

[28]During the discussion in the working group, one delegation expressed the view that this paragraph related to the scope of the draft protocol and should therefore be dealt with in article 4.

Colombia (A/AC.254/5/Add.18)

Colombia proposed adding an annex to the text of the draft protocol in respect of article 2, to read as follows:

"Annex

"1. All import certificates, export certificates or attachments or in-transit shipment authorizations shall indicate the authorized quantity of each type of firearm, parts and components, ammunition, explosives and other related materials (listed by classification and description) that may be shipped pursuant to those documents, as outlined in this annex.

"Export certificates

"2. Each export certificate shall contain the following information:

"*(a)* Domestic export certificate: identified by the country of issuance;

"*(b)* Country of issuance: identified by name or by a unique country code;

"*(c)* Date of issuance: in international date format;

"*(d)* Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing officer's name and signature;

"*(e)* Exporter identification: the exporter's name, address, telephone number and facsimile number and the representative's name (if the exporter is a commercial body) and signature;

"*(f)* Exportation authorization: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for export, listed by classification and description;

"*(g)* Certificate expiry date: date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be shipped pursuant to the export certificate or the date of expiry of the certificate, whichever is earlier;

"*(h)* Importing country information (domestic import certificate): the name of the country of issuance, the date of issuance of the certificate, the competent authority, the importer and final recipient, the authorized quantity of firearms, their parts and components, or ammunition and explosives, and other related materials to be imported and the certified expiry date;

"(i) Importer identification: the importer's name, address, country code of residence and citizenship (if the importer is an individual) and the representative's name (if the importer is a commercial or government body);

"*(j)* Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, country code of residence and citizenship if the final recipient is an individual and the representative's name if the final recipient is a commercial or government body;

"*(k)* Country of origin of the firearms, parts and components, ammunition, explosives and other related materials: the name or unique country code;

"*(l)* Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components,

ammunition, explosives and other related materials (listed by classification and description) shipped to date pursuant to the export certificate;

"*(m)* Additional descriptive information concerning the firearms, parts and components that is required in some countries, such as barrel length, overall length, action, the number of shots, the manufacturer's name and the country of manufacture.

"Export attachments

"3. Each export attachment shall contain the following information:

"*(a)* Shipment information: the serial numbers of the firearms, parts and components, ammunition, explosives and other related materials (where applicable) being shipped, listed by classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, specifying all shipping modes and shippers;

"*(b)* For each shipper identified above: the shipper's name, address, telephone number and facsimile number, and the representative's name and signature (if the shipper is a commercial or government body);

"*(c)* Information on prior shipments, if any, made against the export certificate and the dates of exit of previous shipments: the quantity of the firearms, parts and components, ammunition, explosives and other related materials involved (listed by classification and description) in each shipment, the cumulative quantity of all shipments sent prior to this shipment and the shipper's name.

"Import certificates

"4. Each import certificate shall contain the following information:

"*(a)* Domestic import certificate: identified by the country of issuance;

"*(b)* Country of issuance: identified by name or by a unique country code;

"*(c)* Date of issuance: in international date format;

"*(d)* Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing officer's name and signature;

"*(e)* Importer identification: the importer's name, address, telephone number, facsimile number and country of residence and, if the importer is a commercial or government body, the representative's name, citizenship and signature;

"*(f)* Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, telephone number, facsimile number and country of residence and, if the final recipient is a commercial or government body, the representative's name, citizenship and signature;

"*(g)* Importation authorized: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for import, listed by classification and description;

"*(h)* Certificate expiry date: the date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be imported pursuant to the import certificate or the date of expiry of the certificate, whichever is earlier;

"(i) Export country information: the name of the country of export;

"*(j)* Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) received to date pursuant to the import certificate;

"*(k)* Additional descriptive information concerning the firearms or parts and components: barrel length, overall length, the number of shots, the manufacturer's name and the country of manufacture.

"In-transit shipment authorizations

"5. Each in-transit shipment authorization shall contain the following information:

"*(a)* Country information: domestic in-transit authorization identifier; the country of issuance, identified by name or by a unique country code; the date of issuance; and competent authority identification, including the competent authority's name, address, telephone number and facsimile number;

"*(b)* Identification of the applicant: the applicant's name, address, country of residence, telephone number and facsimile number and the representative's name and signature if the applicant is a commercial or government body;

"*(c)* Authorization of the in-transit shipment: for each country, the in-transit shipment requirements of the competent authority including the authorized ports of entry and exit; expiry dates pertaining to authorization; any other specific information concerning the shipment while in that country, such as the periods during which the shipment is anticipated to be in bond and the anticipated location of the shipment while in bond; any restrictions or conditions imposed by the competent authority; and the authorizing officer's signature and seal."

Eleventh session: 2-28 October 2000

Notes by the Secretariat

4. Delegations based their comments on the text of article 11 of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.5, which was the same as that contained in document A/AC.254/4/Add.2/Rev.4.

Bolivia (A/AC.254/L.256)

Bolivia proposed that paragraph 2 *(b)* of article 11 of the protocol should be amended to read as follows:

"*(b)* Where applicable, the transit States have given notice in writing that they have no objection to the transit, without prejudice to provisions regulating practices and bilateral agreements favouring land-locked States".

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 11
"General requirements for export, import and transit licensing or authorization systems

"1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

"2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

"*(a)* That the importing States have issued import licences or authorizations; and

"*(b)* That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

"3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

"4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

"5. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.

"6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs."

Notes by the Secretariat

5. At its eleventh session, the Ad Hoc Committee considered and finalized article 11 of the draft protocol without further amendment. It was placed together with articles 8 to 10, 12, 14 and 15 of the draft protocol into one chapter entitled "Prevention", on the basis of the proposals made by the Chairman of the Ad Hoc Committee (see A/AC.254/4/Add.2/Rev.6, annex, para. 1). The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 10
General requirements for export, import and transit licensing or authorization systems

1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

(a) That the importing States have issued import licences or authorizations; and

(b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

5. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.

6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

Article 11. Security and preventive measures

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XII
"Security measures

"States Parties, in an effort to eliminate the loss or diversion of firearms, ammunition and other related materials, shall undertake to adopt the necessary measures to ensure the security of firearms, ammunition and other related materials imported into, exported from or in transit through their respective territories."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article XII
"Security measures

"States Parties, in an effort to eliminate the [theft,][1] loss or diversion of firearms, ammunition[, explosives][2] and other related materials, shall undertake to adopt the necessary measures[3] to ensure the security of firearms, ammunition[, explosives][2] and other related materials [imported into, exported from or in transit in their respective territories]."[4]

Notes by the Secretariat

1. The version of this article contained in document A/AC.254/4/Add.2/Rev.1 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2 and 3).

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[1]Addition proposed by Colombia.

[2]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[3]Japan suggested that such measures should be clarified (see A/AC.254/5/Add.1 and Corr.1).

[4]Colombia proposed that this language should be replaced with the words "at the points of manufacture, transport, distribution, sale, export, import and transit through their respective territories". That proposal was supported by the Islamic Republic of Iran. France proposed to delete the words in square brackets, explaining that they would narrow the scope of the article and exclude domestic control. That proposal was supported by Tunisia. Turkey proposed to retain the language in the square brackets. That proposal was supported by Azerbaijan. The United States noted that the article should only deal with the security of transnational commerce, not the security of privately owned guns. The Islamic Republic of Iran suggested that this provision would apply to both storage by Governments and commerce. Canada expressed the view that the original intention of this article was to address the security of commercial goods while they were in States' hands.

2. The text of the draft protocol contained in document A/AC.254/4/Add.2 included a provision entitled "Strengthening of controls at export points" (article XIII), which read as follows:

"Article XIII
"Strengthening of controls at export points

"Each State Party shall adopt such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition and other related materials between its territory and the territories of other States Parties, by strengthening controls at export points."

The text of this article remained unchanged in subsequent versions of the draft protocol (A/AC.254/4/Add.2/Revs.1-3), except that the word "explosives" was added in square brackets after the word "ammunition" on the basis of a proposal submitted by Mexico (see A/AC.254/5/Add.1 and Corr.1). The Islamic Republic of Iran was of the opinion that this article was superfluous, as it overlapped with article XII.

3. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of the Ad Hoc Committee, there was an informal exchange of views on the revised draft protocol. In that context, there was a discussion about merging articles XII and XIII. One participant stated that there were concerns with regard to requirements at export points, given the internal border configuration of the European Union. Another participant raised the issue of the lack of controls in free trade zones. The deliberations of the Technical Session are reflected in the report of the Chairman (A/AC.254/L.86, para. 26).

Seventh session: 17-28 January 2000

Rolling text (A/AC.254/4/Add.2/Rev.4)

"Article 12
"Security and preventive measures[5]

"States Parties, in an effort to [detect,][6] prevent and eliminate the theft, loss or diversion[7] of [, as well as the illicit manufacturing of and trafficking in,][8] firearms, their parts and components and ammunition, shall adopt the necessary [appropriate][9] measures:

[5]This title was adopted for the purpose of further discussion at the seventh session of the Ad Hoc Committee. Other proposed titles were "Security and prevention" (Colombia); "Prevention and control" (Cameroon); and "Security measures" (United Arab Emirates). The Ad Hoc Committee also approved the text reflected in A/AC.254/4/Add.2/Rev.4, merging the content of former articles 12 and 13 into a new article 12.

[6]Proposal of Australia at the seventh session of the Ad Hoc Committee.

[7]At the seventh session of the Ad Hoc Committee, some delegations asked for clarification of the term "diversion". Other delegations pointed out that the term was used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627) in connection with the diversion of goods (in that case, substances, materials and equipment used in the illicit manufacture or production of narcotic drugs or psychotropic substances) from licit to illicit channels.

[8]Proposal of Brazil at the seventh session of the Ad Hoc Committee.

[9]Proposal of Brazil at the seventh session of the Ad Hoc Committee. Japan suggested that such measures should be clarified (see A/AC.254/5/Add.1 and Corr.1).

"*(a)* To ensure the security of firearms, their parts and components and ammunition at the time of manufacture,[10] import, export and transit through their respective territories; and

"Option 1

"*(b)* To strengthen controls of their borders, especially at export points.

"Option 2

"*(b)* To increase the effectiveness of [import and][11] export controls, including, where appropriate, border controls.[8]

"Option 3

"*(b)* To strengthen police [law enforcement][12] and customs transborder cooperation."[13]

Eleventh session: 2-28 October 2000

Notes by the Secretariat

4. Delegations based their comments on the text of this article of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.5, which was the same as that contained in document A/AC.254/4/Add.2/Rev.4.

Japan (A/AC.254/L.259)

Japan proposed to amend article 12 to read as follows:

"States Parties, in an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, shall adopt the appropriate measures:

"*(a)* ...

"*(b)* To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and police and customs transborder cooperation."

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 12
"Security and preventive measures

"In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures:

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[10]At the seventh session of the Ad Hoc Committee, Australia expressed some concern about the inclusion of the word "manufacture" in this provision.

[11]Proposal of Italy at the seventh session of the Ad Hoc Committee.

[12]Proposal of Turkey at the seventh session of the Ad Hoc Committee.

[13]Proposal of France at the seventh session of the Ad Hoc Committee.

"*(a)* To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and

"*(b)* To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation."

Notes by the Secretariat

5. At its eleventh session, the Ad Hoc Committee considered and finalized article 12 of the draft protocol without further amendment. The article was placed together with articles 8 to 11, 14 and 15 of the draft protocol into one chapter entitled "Prevention", on the basis of proposals of the Chairman of the Ad Hoc Committee (see A/AC.254/4/Add.2/Rev.6, annex, para. 1). The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 11
Security and preventive measures

In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures:

(a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and

(b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation.

Article 12. Information

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XIV
"Exchange of information

"1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves, in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

"*(a)* Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition and other related materials;

"*(b)* The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition and other related materials; and ways of detecting them;

"*(c)* Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition and other related materials;

"*(d)* Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials; and

"*(e)* Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

"2. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and prosecute those involved in those illicit activities.

"3. States Parties shall cooperate in tracing firearms, ammunition and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition and other related materials."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article XIV
"Exchange of information[1]

Option 1

"1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves, in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

"*(a)* Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition[, explosives][2] and other related materials;

"*(b)* The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition[, explosives][2] and other related materials; and ways of detecting them;

"*(c)* Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition[, explosives][2] and other related materials;

"*(d)* Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition[, explosives][2] and other related materials; and

"*(e)* Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition[, explosives][2] and other related materials.

"Option 2[3]

"1. States Parties shall exchange among themselves and with the International Criminal Police Organization information concerning firearms, ammunition and other related materials relevant to this Protocol, in conformity with their respective domestic laws and applicable treaties, on matters such as:

"[...]

"Option 1

"2. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition[, explosives][2] and other related materials and prosecute the persons involved in those illicit activities.

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[1]Although the convention was likely to include a general provision on the exchange of information, a provision dealing with that issue in the firearms protocol was recommended. The final form of this provision would need to take into account the corresponding article(s) in the convention. At the seventh session of the Ad Hoc Committee, it was agreed that it was necessary for the protocol to deal with exchange of information in the context of illicit firearm trafficking more specifically than in the corresponding articles of the convention. Many delegations also expressed the view that the text could not be finalized until the text of the convention had been negotiated.

[2]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[3]Alternative proposed by Colombia.

"Option 2[3]

"2. States Parties shall provide to and share with each other and with the International Criminal Police Organization, as appropriate, relevant scientific and technological information useful to law enforcement, in order to enhance their ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and to prosecute the persons involved in those activities.

"Option 1

"3. States Parties shall cooperate in the tracing of firearms, ammunition [, explosives][2] and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition [, explosives][2] and other related materials.[4]

"Option 2[3]

"3. States Parties shall cooperate among themselves and with the International Criminal Police Organization in the tracing of firearms, ammunition and other related materials that may be illicitly manufactured or trafficked. Such cooperation shall include accurate and prompt responses to requests related to such tracing."

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article XIV
"Exchange of information

"1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves [and with the relevant intergovernmental organizations],[5] in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

"*(a)* Authorized producers, dealers,[6] importers, exporters and, whenever possible, carriers of firearms, ammunition [, explosives] and other related materials;

"*(b)* The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition [, explosives] and other related materials, and ways of detecting them;

"*(c)* Routes customarily used by criminal organizations[7] engaged in illicit trafficking in firearms, ammunition [, explosives] and other related materials;

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[4]South Africa suggested including in this paragraph a reference to the Interpol Weapons and Explosives Tracking System as one means of cooperating in tracing (see A/AC.254/5/Add.5).

[5]Addition proposed by Colombia. The United States was of the opinion that there was no need to name all relevant intergovernmental organizations in this article. The Republic of Korea noted that the exchange of information with a certain intergovernmental organization should be based on the agreements between each State and the intergovernmental organization concerned and that such an issue should not be dealt with in the protocol.

[6]At the seventh session of the Ad Hoc Committee, the United States proposed adding the word "brokers" at this point, as a consequence of amendments that it had proposed to articles 5 and 18 bis.

[7]At the seventh session of the Ad Hoc Committee, Pakistan proposed replacing the words "criminal organization" with the words "organized criminal group" for consistency with the language of the convention. Several delegations expressed the view that the wording should not limit the application of this provision to criminal groups.

"*(d)* Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials; and

"*(e)* Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials.[8, 9]

"2. States Parties shall provide to or share with each other, [and with the relevant intergovernmental organizations,][10] as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives] and other related materials and prosecute the persons involved in those illicit activities.

"3. States Parties shall cooperate [among themselves and with the relevant intergovernmental organizations][10] in the tracing of firearms, ammunition [, explosives] and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition [, explosives] and other related materials."

Notes by the Secretariat

1. The version of this article contained in document A/AC.254/4/Add.2/Rev.1 remained virtually unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.3 and 4). The only difference in the text contained in document A/AC.254/4/Add.2/Rev.4 was the deletion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 14
"Exchange of information

"1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves [and with the relevant intergovernmental

[8]At the seventh session of the Ad Hoc Committee, some delegations proposed deleting this subparagraph as it duplicated the corresponding provision of the convention.

[9]At the seventh session of the Ad Hoc Committee, Switzerland proposed adding the following subparagraph:

"In cases of mutual legal assistance, records kept pursuant to article 8 of this Protocol shall be open for confidential access by the State Party concerned".

Japan proposed that, should the Swiss proposal be adopted, it should extend to cases other than legal assistance cases. It therefore proposed to replace the words "In cases of mutual legal assistance" with the words "Where necessary for investigations relating to firearms, their parts and components or ammunition".

[10]Addition proposed by Colombia.

organizations], in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

"*(a)* Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components[11] and ammunition;

"*(b)* The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

"*(c)* Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, their parts and components and ammunition;

"*(d)* Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; and

"*(e)* Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

"2. States Parties shall provide to or share with each other, [and with the relevant intergovernmental organizations,] as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

"3. States Parties shall cooperate [among themselves and with the relevant intergovernmental organizations] in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, their parts and components and ammunition."

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 14
"Information

"1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

"[*Former paragraph 1 was divided into paragraphs 1 and 2 and the subsequent paragraphs were reorganized and renumbered*]

"2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

[11]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

"*(a)* Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

"*(b)* The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

"*(c)* Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and

"*(d)* Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

"3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

"4. States Parties shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests for assistance in tracing such firearms, their parts and components and ammunition, within available means.

"5. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure."[12]

Notes by the Secretariat

2. At its eleventh session, the Ad Hoc Committee considered and finalized article 14 of the draft protocol without further amendment. It was placed together with articles 8 to 12 and 15 of the draft protocol into one chapter entitled "Prevention", on the basis of the proposals made by the Chairman of the Ad Hoc Committee (see A/AC.254/4/Add.2/Rev.6, annex, para. 1). The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

[12]Information on the background to the negotiations on this paragraph is provided in note 3 by the Secretariat concerning the present article, below.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 12
Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(c) Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and

(d) Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

4. States Parties shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests for assistance in tracing such firearms, their parts and components and ammunition, within available means.

5. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Notes by the Secretariat

3. An additional provision on the protection of confidentiality was also discussed throughout the negotiation process, as described below.

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XVII
"Confidentiality[13]

"Subject to the obligations imposed by its constitution or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article XVII
"Confidentiality[13]

"Option 1

"Subject to the obligations imposed by its constitution or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives from another State Party [, including proprietary information pertaining to commercial transactions,][14] if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

"Option 2[10]

"States Parties shall guarantee the confidentiality of any information that they receive, if requested to do so by the State Party providing the information, when its disclosure could jeopardize an ongoing investigation pertaining to matters related to this Protocol. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure."

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[13]Japan suggested that full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law (see A/AC.254/5/Add.1 and Corr.1).

[14]Deletion proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article XVII
"Confidentiality

"Option 1

"Subject to the obligations imposed by its constitution [, other law][15] or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives from another State Party [, including proprietary information pertaining to commercial transactions,] if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.[16]

"Option 2

"States Parties shall guarantee the confidentiality of any information that they receive, if requested to do so by the State Party providing the information, when its disclosure could jeopardize an ongoing investigation pertaining to matters related to this Protocol. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure."

Seventh session: 17-28 January 2000

Notes by the Secretariat

4. Delegations based their comments on the text of article 17 of the revised draft protocol contained in document A/AC./254/4/Add.2/Rev.3, which was the same as that contained in document A/AC./254/4/Add.2/Rev.2.

Rolling text (A/AC.254/4/Add.2/Rev.4)

"Article 17
"Confidentiality[17, 18]

"Subject to the obligations imposed by its constitution [, other law][19] or any international agreements, each State Party shall guarantee the confidentiality of any infor-

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[15]Addition proposed by the United States.

[16]China suggested that State parties that were to provide information should be notified prior to providing the information. That suggestion was supported by the United Arab Emirates.

[17]At the seventh session of the Ad Hoc Committee, it was decided to retain only the former option 1 for the purposes of further discussion and to remove the square brackets from the words "including proprietary information pertaining to commercial transactions". Several delegations noted that the confidentiality and notification requirements of this article had implications for article 14 of the draft convention, which dealt with mutual legal assistance in criminal matters. They expressed the view that those requirements should not reduce the effectiveness of article 14.

[18]At the seventh session, Mexico proposed a reorganization of this article so that the text would read as follows:

"States Parties shall guarantee the confidentiality of any information that they receive from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information, unless the State Party concerned has previously informed the State Party providing the information about the possibility that it may be unable to fulfil this obligation pursuant to its domestic legislation. In cases where the confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure."

[19]Several delegations proposed alternative wording for this provision at the seventh session of the Ad Hoc Committee. Proposals were "domestic law" (Australia); "domestic legislation" (Italy); and "constitution or law" (Pakistan).

mation that it receives from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If for legal reasons[20] such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure."[21]

Notes by the Secretariat

5. At the eleventh session of the Ad Hoc Committee, it was agreed that article 17 should be moved, as amended, to become paragraph 5 of article 14 (Information) of the draft protocol.

[20]At the seventh session of the Ad Hoc Committee, Cameroon suggested that the word "legal" should be replaced with the word "judicial". Other delegations expressed concern that the term "judicial" was too narrow in scope. Australia proposed that the words "for legal reasons" should be replaced with the words "as a result of obligations imposed by its constitution [, domestic] law or any international agreements".

[21]At the seventh session of the Ad Hoc Committee, China proposed that the text should require that the State party of whom the information was requested should be informed about whether confidentiality could be maintained before the information was provided. It proposed to replace the words "that provided the information be notified prior to its disclosure" with the words "is to provide the information shall be notified prior to its provision of the information". In discussing this proposal, some delegations favoured requiring notification prior to providing the information, while others favoured notification after release but before disclosure of the information for legal reasons. Delegations were urged to consider this issue carefully so that a compromise could be reached at the next session. As indicated above, Japan had suggested, at an earlier session, that full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law (see A/AC.254/5/Add.1 and Corr.1).

Article 13. Cooperation

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XV
"Cooperation

"1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

"2. States Parties shall identify a national body or a single point of contact to act as liaison between States Parties on matters relating to this Protocol."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article XV
"Cooperation

"1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition[, explosives][1] and other related materials.

"2. Each State Party shall identify a national body or a single point of contact[2] to act as liaison between it and other States Parties [and between it and the International Criminal Police Organization][3] [on matters relating to this Protocol].[4]

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[1]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

[2]Japan noted that designation of "a single point of contact" should allow the exchange of information already established among the existing authorities (see A/AC.254/5/Add.1 and Corr.1).

[3]Addition proposed by Colombia.

[4]Mexico proposed to replace this language with the phrase "for the purposes of cooperation and information exchange" (see A/AC.254/5/Add.1 and Corr.1).

"[3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms, ammunition, explosives and other related materials to prevent and detect the illicit activities referred to in paragraph 1 of this article.]"[5]

Notes by the Secretariat

1. The version of article 15 contained in document A/AC.254/4/Add.2/Rev.1 remained virtually unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2-4). The only difference in the text contained in document A/AC.254/4/Add.2/Rev.4 was the deletion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

2. At the seventh session of the Ad Hoc Committee, the importance of this article was stressed by some delegations. Despite there being an identical provision in the draft convention, it was decided to retain the article for the time being.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 15
"Cooperation

"1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components[6] and ammunition.

"2. Each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties [and between it and the relevant inter-governmental organizations] [on matters relating to this Protocol].

"[3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article.]"

[5]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1); see also the comments of Japan (A/AC.254/5/Add.1 and Corr.1).

[6]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 15
"Cooperation

"1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

"2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.

"3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered and finalized article 15 of the draft protocol without further amendment. It was placed together with articles 8 to 12 and 14 of the draft protocol into one chapter entitled "Prevention", on the basis of the proposals of the Chairman of the Ad Hoc Committee (see A/AC.254/4/Add.2/Rev.6, annex, para. 1). The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 13
Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.

3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article.

C. Interpretative note

The interpretative note on article 13 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its twelfth session (see A/55/383/Add.3, para. 7) is as follows:

Paragraph 2

The reference to "matters relating to this Protocol" in this paragraph was included in order to take into account the fact that, for matters relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, some States parties might find it necessary to establish different authorities than those responsible for dealing with mutual legal assistance matters under article 18 of the convention.

Article 14. Training and technical assistance

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XVIII
"Technical assistance[1]

"States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, including technical assistance in those matters identified in article 18 of the Convention."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article XVIII
"Technical assistance[2]

"States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][3] and other related materials, including technical assistance in those matters identified in article 18 of the Convention."

Notes by the Secretariat

1. The version of article 18 contained in document A/AC.254/4/Add.2/Rev.1 remained virtually unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2-4). The only difference in the text contained in document

[1]It was considered that the final form of this provision would need to take into account the corresponding article(s) in the convention.

[2]Japan suggested that this article should appear as paragraph 3 of article XVI of the protocol (see A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the Netherlands.

[3]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

A/AC.254/4/Add.2/Rev.4 was the deletion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

2. At the seventh session of the Ad Hoc Committee, some delegations suggested that this provision could eventually be deleted, but there was agreement that it should be retained pending the finalization of the corresponding provision of the draft convention.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 18
"Technical assistance

"States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components[4] and ammunition, including technical assistance in those matters identified in article 19 of the Convention."

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 18
"Training and technical assistance

"States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the training and technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered and finalized article 18 of the draft protocol without further amendment. The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the

[4]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 14
Training and technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the training and technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention.

Article 15. Brokers and brokering

A. Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/5/Add.1 and Corr.1)

The United States proposed including a new article in the draft protocol, to read as follows:

"[Article [...]
"Registration and licensing of brokers

"Any person, wherever located, who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms is required to register with and receive approval from his or her country of nationality.]"

Notes by the Secretariat

1. The proposal for the addition of this article in the draft protocol was also supported by South Africa (see A/AC.254/5/Add.5) and Turkey.

Third session: 28 April-3 May 1999

Notes by the Secretariat

2. Delegations based their comments on the text of this article of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.1, in which the provision on registration and licensing of brokers was the same as that contained in document A/AC.254/5/Add.1 and Corr.1.

Rolling text (A/AC.254/4/Add.2/Rev.2)

"[Article XVIII bis
"Registration and licensing of brokers[1]

"Any person[2] [, wherever located,][3] who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms

[1]France and Saudi Arabia were of the opinion that regulating licit brokers would not help control such illicit trafficking
[2]South Africa noted that, generally, obligations should be addressed to States parties, not to individual citizens.
[3]Deletion proposed by Nigeria, supported by the United Kingdom of Great Britain and Northern Ireland.

[and ammunition][4] is required to register with and receive approval[5] from his or her country of nationality.[6]]"

Notes by the Secretariat

3. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of the Ad Hoc Committee, a new proposal by one participant was discussed. Many participants expressed concern with regard to the registration and licensing of brokers in the country of nationality as well as the country of operation. One participant also mentioned the difficulties that could arise in cases involving dual nationality. Another participant raised concerns with regard to registration, in particular global licences with which dealers could transfer shipments without individual authorizations. One participant noted that a clear definition of brokering was essential. There was concern about how the provision would operate. The deliberations of the Technical Session are reflected in the report of the Chairman (see A/AC.254/L.86, para. 28).

4. At the fifth session of the Ad Hoc Committee, Finland submitted a paper arguing that brokering should be subject to authorization given by the authority of the location, i.e. the State where the activities took place and not the State of nationality or permanent residence of the broker. If the broker was not a citizen of the State where the activities took place, an opinion on the appropriateness of the person from his State of nationality or permanent residence should be sought before issuing the authorization. In that context, the broker would possibly be obliged to declare without delay the act of brokering to the authorities concerned, which, having received such a declaration, would be under an obligation to give a notification to the authorities of the State of departure and the State of destination of the objects (see A/AC.254/CRP.22).

Seventh session: 17-28 January 2000

Notes by the Secretariat

5. Delegations based their comments on the text of this article of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.3, which was the same as that contained in document A/AC.254/4/Add.2/Rev.2.

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[4]Addition proposed by Turkey.

[5]Switzerland suggested that the meaning of the term "approval" should be clarified.

[6]Nigeria noted that brokers should instead register with the country in which they were doing business. Japan, the United Arab Emirates and the United Kingdom questioned the enforceability of requiring such registration in the country of nationality. At the fifth session of the Ad Hoc Committee, the Syrian Arab Republic proposed that this registration should be required in the country of residence (see A/AC.254/L.67). The United States noted that it would propose a redrafted text of the article.

Rolling text (A/AC.254/4/Add.2/Rev.4)

"[Article 18 bis
"Registration and licensing of brokers,[7]
[traders and forwarders][8]

"[With a view to preventing and combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,][8] States Parties that have not done so shall take steps to require persons[9] who act on behalf of others, in return for a fee or other consideration, [for traders, forwarders][8] in negotiating or arranging transactions involving the international export or import of firearms, their parts and components or ammunition:

"*(a)* To register with the country [of nationality and with the country where the negotiations or arrangements referred to above take place;][10] [where they are resident or established;][11] and

"*(b)* To obtain for [their transactions][11] [each transaction][10] a licence or authorization from the country [where the negotiations or arrangements referred to above take place][10] [where they are resident or established.][11]]"

Notes by the Secretariat

6. The issue of brokers was discussed at the informal consultations held during the eighth session of the Ad Hoc Committee. A majority of delegations agreed that the concept of brokering should be defined and that the activities of brokers should be subject to the protocol, but several delegations reserved their position or requested that the relevant portion of articles 2, 5 and 18 bis should be kept in square brackets. Of the delegations that supported the inclusion of these provisions, some supported defining the term "broker" in article 18 bis, while others preferred a separate definition in article 2. There was discussion, but no agreement, as to whether the proposals of Switzerland or the United States for the requirements of licensing and registration should be adopted.

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[7]At the seventh session of the Ad Hoc Committee, it was decided to replace the originally proposed text of article 18 bis with a new text proposed by the United States (see A/AC.254/5/Add.18), as amended by Colombia. A second option for some of the text proposed by Switzerland was also incorporated for the purpose of further discussion. Several delegations reserved their position on the proposal pending further consultations and it was noted that, as the previous text of this article had not been approved, the text should also remain in square brackets. Several delegations also requested clarification of the meaning of the word "broker". Generally, the Swiss proposals would base licensing requirements on the laws of the broker's place of residence or business and allow the conducting of regular business or multiple transactions on a single licence. The proposals of the United States would require a separate licence for each transaction and would require licensing by several jurisdictions: the broker's residence, the country of nationality and the country where the transaction took place. Delegations were asked to consult on these major issues to permit closure of the text at the subsequent session.

[8]Proposed by Colombia at the seventh session of the Ad Hoc Committee (see A/AC.254/5/Add.18).

[9]At the seventh session of the Ad Hoc Committee, Malawi proposed that the word "person" should be replaced with the word "broker" and that the words "who act on behalf of others, in return for a fee or other consideration in negotiating or arranging transactions involving the international export or import of firearms, their parts and components or ammunition" should be used to construct a definition of the term "broker" in article 2. At the informal consultations held during the eighth session of the Ad Hoc Committee, there was general agreement that the intent in using the word "person" here was to include both natural and legal or corporate persons.

[10]Proposed by the United States at the seventh session of the Ad Hoc Committee.

[11]Proposed by Switzerland at the seventh session of the Ad Hoc Committee.

Eleventh session: 2-28 October 2000

Notes by the Secretariat

7. Delegations based their comments on the text of article 18 bis of the revised draft protocol contained in document A/AC.254/4/Add.2/Rev.5, which was the same as that contained in document A/AC.254/4/Add.2/Rev.4.

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 18 bis
"Brokers and brokering[12]

"1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

"*(a)* Requiring registration of brokers operating within their territory;

"*(b)* Requiring licensing or authorization of brokering; or

"*(c)* Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

"2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 14 of this Protocol and to retain records regarding brokers and brokering in accordance with article 8 of this Protocol."

Notes by the Secretariat

8. At its eleventh session, the Ad Hoc Committee considered and finalized article 18 bis of the draft protocol without further amendment. The article was approved at the twelfth session of the Ad Hoc Committee (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

[12]Based on a proposal submitted by the United States at the eleventh session of the Ad Hoc Committee (see A/AC.254/L.263).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 15
Brokers and brokering

1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

(a) Requiring registration of brokers operating within their territory;

(b) Requiring licensing or authorization of brokering; or

(c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.

Final provisions

Article 16. Settlement of disputes

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 19
"Settlement of disputes

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time [90 days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Protocol, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

"3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

Notes by the Secretariat

1. The text of article 19 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes were made to the text. For issues related to this provision, see article 35 of the convention in part one, article 15 of the trafficking in persons protocol in part two and article 20 of the migrants protocol in part three.

2. The version of this article contained in document A/AC.254/4/Add.2/Rev.3 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.4 and 5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 19
"Settlement of disputes

"1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

"2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

"3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. 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.

"4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary General of the United Nations."

Notes by the Secretariat

3. At its eleventh session, the Ad Hoc Committee considered and finalized article 19 of the draft protocol without further amendment. The article was approved by the Ad Hoc Committee at its twelfth session (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

III. Final provisions

Article 16
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be

submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. 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.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17. Signature, ratification, acceptance, approval and accession

A. Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XIX
"Final clauses

"1. This Protocol shall be open for signature by all States from [...] at United Nations Headquarters in New York.

"2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

1. Final clauses

"Option 1

"Article XIX
"Final clauses[1]

"1. This Protocol shall be open for signature by all States from [...] at United Nations Headquarters in New York.

"2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

[1]The United Kingdom of Great Britain and Northern Ireland noted that there was no provision for entering into force, for denunciation or accession, or for reservations (see A/AC.254/5/Add.1 and Corr.1).

"Option 2

"Article XIX
"Deposit

"The original instrument of this Protocol shall be deposited with the Secretary-General of the United Nations for registration and publication. The Secretary-General shall notify the Member States of the United Nations of signatures, of the receipt of instruments of ratification or denunciation and of any reservations made."[2]

2. Reservations

"[Article […]
"Reservations

"States Parties may, at the time of adoption, signature or ratification, make reservations to this Protocol, provided that said reservations are not incompatible with the object and purposes of the Protocol or the Convention and that they concern one or more specific provisions thereof]."[3]

Rolling text (A/AC.254/4/Add.2/Rev.2)

1. Final clauses

"Article XIX
"Final clauses

"1. This Protocol shall be open for signature by all States from [...] at United Nations Headquarters in New York.

"2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary- General of the United Nations."

2. Reservations

"[Article XVIII ter
"Reservations

"States Parties may, at the time of adoption, signature or ratification, make reservations to this Protocol, provided that said reservations are not incompatible with the object and purposes of the Protocol or the Convention and that they concern one or more specific provisions thereof]."

Notes by the Secretariat

1. At its third session, the Ad Hoc Committee decided to refrain from considering these provisions of the draft protocol in the interest of consistency and of making full use

[2]Option 2 was incorporated in the text on the basis of a proposal submitted by Mexico (see A/AC.254/5/Add.1 and Corr.1). See also article 21 of the present protocol.

[3]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

of the time available to it, as these articles and the final clauses in general were considered standard in international instruments and depended on the outcome of the negotiations on similar provisions of the convention (see A/AC.254/14, para. 16).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 20
"Signature, ratification, acceptance, approval, accession and reservations

"1. This Protocol shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

"2. The present Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"Option 1

"[3. No reservations may be made in respect of any provision of this Protocol.]

"Option 2

"[3. Reservations shall be subject to the provisions of the 1969 Vienna Convention on the Law of Treaties.[4]]

"[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

"[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

"6. This Protocol is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

Notes by the Secretariat

2. The text of article 20 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 36 of the convention in part one, article 16 of the trafficking in persons protocol in part two and article 21 of the migrants protocol in part three.

[4]United Nations, *Treaty Series*, vol. 1155, No. 18232.

3. The version of article 20 contained in document A/AC.254/4/Add.2/Rev.3 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.4 and 5).

Twelfth session: 26 February-2 March 2001

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 20
"Signature, ratification, acceptance, approval and accession

"1. This Protocol shall be open to all States for signature from [...] to [...] in [...] and thereafter at United Nations Headquarters in New York until [...].

"2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

"3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

"4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence."

Notes by the Secretariat

4. In the draft of the protocol contained in document A/AC.254/4/Add.2/Rev.6, on the basis of a proposal by China at the eleventh session of the Ad Hoc Committee, a new article 20 bis on reservations was added. The article read as follows :

"[Article 20 bis
"Reservations

"1. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.[4]

"2. The Secretary General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.

"3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary General.]"

Most delegations opposed the inclusion of this provision, noting that the Ad Hoc Committee had previously decided not to deal expressly with the question of reservations in the text of the convention and that that decision had subsequently been adopted by the Ad Hoc Committee with respect to the other two protocols. It was noted that if no reference was made to reservations in any of the instruments, the principles established by the Vienna Convention on the Law of Treaties would apply, but that if specific reference was made in the firearms protocol, then interpretation of the other instruments might be affected. At the twelfth session of the Ad Hoc Committee, the Chairman proposed the deletion of article 20 bis (see A/AC.254/L.281, para. 9).

5. At its twelfth session, the Ad Hoc Committee considered, finalized and approved article 20 of the draft protocol, as amended. The Chairman proposed a revised version of paragraph 1 (see A/AC.254/L.281, para. 8), which was reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 17
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature at United Nations Headquarters in New York from the thirtieth day after its adoption by the General Assembly until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

C. Interpretative note

The interpretative note on article 17 of the protocol approved by the Ad Hoc Committee and contained in its report on the work of its twelfth session (see A/55/383/Add.3, para. 8) is as follows:

While the protocol has no specific provisions on reservations, it is understood that the Vienna Convention on the Law of Treaties[4] of 1969 applies regarding reservations.

Article 18. Entry into force

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 21
"Entry into force

"1. The present Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...] instrument of ratification, acceptance, approval or accession.

"2. For each State Party ratifying, accepting, approving or acceding to the Protocol after the deposit of the [...] instrument of such action, the Protocol shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument."

Notes by the Secretariat

1. The text of article 21 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 38 of the convention in part one, article 17 of the trafficking in persons protocol in part two and article 22 of the migrants protocol in part three.

2. The version of this article contained in document A/AC.254/4/Add.2/Rev.3 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.4 and 5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 21
"Entry into force

"1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the [fortieth] instrument of ratification, acceptance, approval or accession,

except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

"2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later."

Notes by the Secretariat

3. The Ad Hoc Committee considered article 21 of the draft protocol at its eleventh session. The article was then finalized and approved by the Ad Hoc Committee at its twelfth session, as amended. The amendment consisted of removal of the square brackets in paragraph 1, as proposed by the Chairman of the Ad Hoc Committee at its eleventh session (see A/AC.254/L.281, para. 10). The last amendment is reflected in the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000.

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 18
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 19. Amendment

A. Negotiation texts

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 22
"Amendment

"1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

"2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

"3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted."

Notes by the Secretariat

1. The text of article 22 is identical to the text of the corresponding provision of the draft Convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 39 of the convention in part one, article 18 of the trafficking in persons protocol in part two and article 23 of the migrants protocol in part three.

2. The version of this article contained in document A/AC.254/4/Add.2/Rev.3 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.4 and 5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 22
"Amendment

"1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

"2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

"3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

"4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

"5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved."

Notes by the Secretariat

3. The Ad Hoc Committee considered article 22 of the draft protocol at its eleventh session. The article was finalized without further amendment and approved by the Ad Hoc Committee at its twelfth session (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 19
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 20. Denunciation

A. Negotiation texts

First session: 19-29 January 1999

Mexico (A/AC.254/5/Add.1 and Corr.1)

"Article XXIII
"Denunciation

"1. This Protocol shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the Secretariat of the United Nations Organization. After six months from the date of deposit of the instrument of denunciation, the Protocol shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

"2. The denunciation shall not affect any requests for information or assistance made during the time that the Protocol is in force for the denouncing State."

Notes by the Secretariat

1. The text proposed by Mexico was included, with minor editorial corrections, in the drafts of the protocol contained in document A/AC.254/4/Add.2/Revs.1 and 2 in square brackets.

2. At its third session, the Ad Hoc Committee decided to refrain from considering this provision of the draft protocol in the interest of consistency and of making full use of the time available to it, as this article and the final clauses in general were considered standard in international instruments and depended on the outcome of the negotiations on similar provisions of the convention (see A/AC.254/14, para. 16).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 23
"Denunciation

"A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General."

Notes by the Secretariat

3. The text of article 23 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 40 of the convention in part one, article 19 of the trafficking in persons protocol in part two and article 24 of the migrants protocol in part three.

4. The version of article 23 contained in document A/AC.254/4/Add.2/Rev.3 remained unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.4 and 5).

Eleventh session: 2-28 October 2000

Rolling text (A/AC.254/4/Add.2/Rev.6)

"Article 23
"Denunciation

"1. A State Party may denounce this Protocol by written notification to the Secretary General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary General.

"2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it."

Notes by the Secretariat

5. The Ad Hoc Committee considered article 23 of the draft protocol at its eleventh session. The article was finalized without further amendment and approved by the Ad Hoc Committee at its twelfth session (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 20
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 21. Depositary and languages

A. Negotiation texts

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Option 1

"Article XIX
"Final clauses[1]

"1. This Protocol shall be open for signature by all States from [...] at United Nations Headquarters in New York.

"2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"Option 2[2]

"Article XIX
"Deposit

"The original instrument of this Protocol shall be deposited with the Secretary-General of the United Nations for registration and publication. The Secretary-General shall notify the Member States of the United Nations of signatures, of the receipt of instruments of ratification or denunciation and of any reservations made."

Rolling text (A/AC.254/4/Add.2/Rev.2)

"Article XIX bis
"Deposit

"The original instrument of this Protocol shall be deposited with the Secretary-General of the United Nations for registration and publication. The Secretary-General shall notify the Member States of the United Nations of signatures, of the receipt of instruments of ratification or denunciation and of any reservations made."

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[1]The United Kingdom of Great Britain and Northern Ireland noted that there was no provision for entering into force, for denunciation or accession, or for reservations (see A/AC.254/5/Add.1 and Corr.1).

[2]Alternative proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

Notes by the Secretariat

1. At its third session, the Ad Hoc Committee decided to refrain from considering this provision of the draft protocol in the interest of consistency and of making full use of the time available to it, as this article and the final clauses in general were considered standard in international instruments and depended on the outcome of the negotiations on similar provisions of the convention (see A/AC.254/14, para. 16).

Sixth session: 6-17 December 1999

Rolling text (A/AC.254/4/Add.2/Rev.3)

"Article 24
"Languages and depositary

"1. The Secretary-General of the United Nations is designated depositary of the present Protocol.

"2. The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

"IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol."

Notes by the Secretariat

2. The text of article 24 is identical to the text of the corresponding provision of the draft convention and is reproduced in accordance with a decision made by the Ad Hoc Committee at its sixth session and without prejudice to its content, which was still under negotiation. Only necessary editorial changes have been made to the text. For issues related to this provision, see article 41 of the convention in part one, article 20 of the trafficking in persons protocol in part two and article 25 of the migrants protocol in part three.

3. The Ad Hoc Committee considered article 24 of the draft protocol at its eleventh session. The article was finalized, without further amendment, and approved by the Ad Hoc Committee at its twelfth session (see the final text of the protocol, as included in the report of the Ad Hoc Committee (A/55/383/Add.2, sect. III, draft resolution, annex), that was submitted to the General Assembly for adoption pursuant to resolutions 54/126 of 17 December 1999 and 55/25 of 15 November 2000).

B. Approved text adopted by the General Assembly (see resolution 55/255, annex)

Article 21
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Deleted articles

Notes by the Secretariat

1. The following separate articles were also discussed in the context of the negotiation process of the firearms protocol, but were eventually deleted. As already indicated (see note 4 by the Secretariat concerning article 37 of the convention in part one and the chapters on deleted articles of the trafficking in persons protocol and the migrants protocol, in parts two and three, respectively), the objective of the present publication is to reflect and present the complete picture of the negotiations on the content of the convention and its protocols, irrespective of which provisions were finally included in the approved texts. For this reason, it has been considered appropriate to present the drafts of these articles, as well as the discussions on their content that took place before the decision was finally made to delete them.

Sovereignty

Negotiation texts

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"[Article […]
"Sovereignty

"1. States Parties shall fulfil their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

"2. A State Party shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions that are exclusively reserved to the authorities of that other State Party by its domestic law.]"

Notes by the Secretariat

2. This article appeared as article 4 bis in the subsequent drafts of the protocol. It was proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1) during the first session of the Ad Hoc Committee.

3. At the fifth session of the Ad Hoc Committee, after a brief discussion, it was decided to defer further consideration of the proposed text of this article until the related provision of the draft convention (article 2) had been further developed.

4. During the informal consultations held during the eighth session of the Ad Hoc Committee, it was noted that the text of this article was substantially similar to article 2, paragraphs 3 and 4, of the draft convention and that the Ad Hoc Committee had decided in principle to make such provisions of the draft convention applicable to the draft protocols, mutatis mutandis. Pending a decision of the Ad Hoc Committee on the exact means of doing this, however, language had not been adopted for the draft convention and the informal consultations therefore recommended retention of article 4 bis for further consideration once language had been adopted in the draft convention.

5. Article 4 bis was deleted by the Ad Hoc Committee at its eleventh session.

Right to self-determination

Negotiation texts

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"[Article [...][1]

"The provisions of this Protocol shall not be construed or applied either directly or indirectly to undermine the inalienable right to self-determination of peoples struggling against colonial or other forms of alien domination and foreign occupation, a right, that is enshrined in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.[2]]"[3]

Notes by the Secretariat

6. At the eleventh session of the Ad Hoc Committee, many delegations recognized the importance of the issues reflected in the proposal, but were of the view that those issues should not be dealt with in the protocol. The Vice Chairman proposed that the text of the article should be moved to the preamble and requested delegations that supported its retention to develop text to be included in the preamble based on the present language.

7. At the twelfth session of the Ad Hoc Committee, the Chairman proposed the deletion of the article (see A/AC.254/L.281, para. 4). The text of the article was further developed and incorporated in the preamble of the protocol. Reference to the right to self-determination was also included in the draft resolution by which the General Assembly would adopt the present protocol (see part five) .

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[1]Article 0 in the subsequent drafts of the protocol.

[2]General Assembly resolution 2625 (XXV), annex.

[3]Addition proposed by Pakistan.

Jurisdiction

Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article VI
"Jurisdiction

"Each State Party shall adopt such measures as may be necessary to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences that it has established pursuant to this Protocol."

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article VI
"Jurisdiction[4]

"Option 1

"Each State Party shall adopt such measures as may be necessary [within its own national legislation][5] to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences that it has established pursuant to this Protocol.

"Option 2[6]

"1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Protocol when the offence in question is committed in its territory.

"2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Convention when the offence is committed by one of its nationals or by a person who habitually resides in its territory.

"3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the basis of the nationality of the alleged offender.

"4. This Protocol does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law."

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[4]It was considered that, depending on the final draft of the convention, this provision might not be necessary or might require modification.

[5]Addition proposed by Ecuador.

[6]Alternative proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1). The United Kingdom of Great Britain and Northern Ireland also suggested that this provision could be extended to include a provision allowing States parties to maintain jurisdiction over their nationals who had committed no offence in their home country but had engaged in illicit arms trafficking abroad (see A/AC.254/5/Add.1 and Corr.1).

Notes by the Secretariat

8. At the fifth session of the Ad Hoc Committee, Japan proposed that article VI should be amended to read as follows (see A/AC.254/L.94):

> "Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in article V of this Protocol. Article 9 of the Convention shall apply mutatis mutandis to the offences established pursuant to this Protocol".

9. At the eleventh session of the Ad Hoc Committee, it was agreed that this article should be deleted in view of the mutatis mutandis application of the corresponding provision of the convention (article 15).

Exchange of experiences and training

Negotiation texts

First session: 19-29 January 1999

Canada (A/AC.254/4/Add.2)

"Article XVI
"Exchange of experiences and training

"1. States Parties shall cooperate in formulating programmes for the exchange of experiences and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proven to be effective in efforts to implement this Protocol.

"2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials. The subjects covered in such training shall include, inter alia:

"*(a)* Identification and tracing of firearms, ammunition and other related materials;

"*(b)* Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, the methods of shipment used and the means of concealment used; and

"*(c)* Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition and other related materials."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"Article XVI
"Exchange of experiences and training[7]

"1. States Parties shall cooperate in formulating programmes for the exchange of experiences and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proved to be effective in efforts to implement this Protocol.

"2. States Parties shall cooperate with each other and with [the International Criminal Police Organization, as well as other][8] competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][9] and other related materials. The subjects covered in such training shall include, inter alia:

"*(a)* Identification and tracing of firearms, ammunition [, explosives][9] and other related materials;

"*(b)* Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition [, explosives][9] and other related materials, the methods of shipment used and the means of concealment used; and

"*(c)* Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition[, explosives][9] and other related materials."

Notes by the Secretariat

9. The version of this article contained in document A/AC.254/4/Add.2/Rev.1 remained virtually unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2-4). The only difference in the text contained in document A/AC.254/4/Add.2/Rev.4 was the deletion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

10. At the seventh session of the Ad Hoc Committee, some delegations expressed the view that this article should be kept in the draft protocol despite there being an identical provision in the draft convention.

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[7]Although the convention was likely to include a general provision on exchange of experience and training, it was considered that it would be useful to include a provision dealing with those issues in this protocol. The final form of this provision would need to take into account the corresponding article(s) in the convention.

[8]Addition proposed by Colombia.

[9]Addition proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1).

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"Article 16
"Exchange of experience and training

"1. States Parties shall cooperate in formulating programmes for the exchange of experience and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proved to be effective in efforts to implement this Protocol.

"2. States Parties shall cooperate with each other and with [the International Criminal Police Organization, as well as other] competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.[10] The subjects covered in such training shall include, inter alia:

"*(a)* Identification and tracing of firearms, their parts and components and ammunition;

"*(b)* Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, the methods of shipment used and the means of concealment used; and

"*(c)* Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, their parts and components and ammunition."

Notes by the Secretariat

11. At the eleventh session of the Ad Hoc Committee, it was agreed that this article should be deleted in view of the mutatis mutandis application of the corresponding provision (article 29) of the convention.

Establishment of a focal point

Negotiation texts

First session: 19-29 January 1999

United States of America (A/AC.254/5/Add.1 and Corr. 1)

"Article [...][proposed new article]
"Establishment of a focal point

"1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within […] responsible for:

[10]The words "other related materials" were replaced by the words "parts and components" throughout the text of the draft protocol, as agreed at the informal consultations held during the eighth session of the Ad Hoc Committee (see A/AC.254/L.174, para. 4).

"*(a)* Promoting the exchange of information contemplated under this Protocol;

"*(b)* Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

"*(c)* Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition and other related materials;

"*(d)* Promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

"*(e)* Requesting from non-party States, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

"*(f)* Promoting measures to facilitate the application of this Protocol;

"*(g)* Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;

"*(h)* Establishing a database for consultation among States Parties on illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

"(i) Disseminating information to the general public on matters related to this Protocol;

"*(j)* Coordinating international efforts to combat the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, in particular among relevant international organizations."

Third session: 28 April-3 May 1999

Rolling text (A/AC.254/4/Add.2/Rev.1)

"[Article [...]
"Establishment of a focal point[11]

"1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within [the Secretariat of the United Nations][12] responsible for:

"*(a)* Promoting the exchange of information provided for under this Protocol;

"*(b)* Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

"*(c)* Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition, explosives and other related materials;

"*(d)* Promoting training and the exchange of knowledge and experiences among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

[11]New article proposed by Mexico and the United States (see A/AC.254/5/Add.1 and Corr.1) and supported by South Africa (A/AC.254/5/Add.5). Japan and the Netherlands noted a need to clarify the role and responsibility of the proposed focal point to avoid duplication. France supported this article and proposed to consider utilizing, in order to avoid duplication of work, existing relevant United Nations mechanisms, such as the Coordinating Action on Small Arms of the Secretariat, or relevant intergovernmental organizations. Pakistan, the Republic of Korea and Saudi Arabia were of the opinion that this article was superfluous, Pakistan noting that it overlapped with article XV, paragraph 2. The United Arab Emirates was of the opinion that further consideration was needed on the necessity for such a focal point.

[12]Proposed by Mexico (see A/AC.254/5/Add.1 and Corr.1). France, Saudi Arabia and the United States noted that budgetary implications should be kept in mind in designating this focal point in the Secretariat.

"*(e)* Requesting from States not Parties to this Protocol, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;[13]

"*(f)* Promoting measures to facilitate the application of this Protocol;

"*(g)* Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;[14]

"*(h)* Establishing a database for consultation among States Parties on the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials, including those seized, confiscated or forfeited;

"(i) Disseminating information to the general public on matters related to this Protocol;

"*(j)* Coordinating international efforts, in particular among relevant international organizations, to combat the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.]"

Notes by the Secretariat

12. At the Vienna Technical Session on the Firearms Protocol, hosted by the Government of Japan on 11 and 12 October 1999 on the occasion of the fifth session of the Ad Hoc Committee, there was recognition of the important functions to be carried out by a focal point distinct from a national point of contact. One participant noted that many of the functions in this part of the draft protocol were duplicated in the draft convention and suggested that the discussion should be deferred until the relevant provisions in the draft convention had been discussed. Several participants recognized that the focal point should have expertise in criminal matters. Another participant noted that the role or function of the International Criminal Police Organization (Interpol) should be considered, as well as the need to identify the kind of information to be exchanged. It was also noted that it was important to define clearly the scope of the information that would be exchanged. The deliberations of the Technical Session are reflected in the report of the Chairman (see A/AC.254/L.86, para. 27).

13. The version of this article contained in document A/AC.254/4/Add.2/Rev.1 remained virtually unchanged in the intermediate drafts of the protocol (A/AC.254/4/Add.2/Revs.2-4). The only difference in the text contained in document A/AC.254/4/Add.2/Rev.4 was the deletion of the word "explosives" throughout the article, following the decision of the Ad Hoc Committee at its seventh session to remove references to explosives from the draft protocol after having been informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999 (see A/AC.254/25, para. 22; see also note 2 by the Secretariat concerning article 3 of the present protocol).

14. At the seventh session of the Ad Hoc Committee, it was decided that at least some of the provisions, including this article, were not redundant in spite of there being identical provisions in the draft convention and that they should be retained until the corresponding articles of the convention had been negotiated.

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[13]Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to extend the role of such a focal point to include cooperation with States that were not parties to the protocol.

[14]Pakistan, the Republic of Korea, Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to address in the protocol the issue of Security Council embargoes on arms transfers.

Eighth session: 21 February-3 March 2000

Rolling text (A/AC.254/4/Add.2/Rev.5)

"[Article 15 bis
"Establishment of a focal point

"In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within [the Secretariat of the United Nations] responsible for:

"*(a)* Promoting the exchange of information provided for under this Protocol;

"*(b)* Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

"*(c)* Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, their parts and components and ammunition;

"*(d)* Promoting training and the exchange of knowledge and experiences among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

"*(e)* Requesting from States not Parties to this Protocol, when appropriate, information on the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;

"*(f)* Promoting measures to facilitate the application of this Protocol;

"*(g)* Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;

"*(h)* Establishing a database for consultation among States Parties on the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including those seized, confiscated or forfeited;

"(i) Disseminating information to the general public on matters related to this Protocol;

"*(j)* Coordinating international efforts, in particular among relevant international organizations, to combat the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.]"

Notes by the Secretariat

15. At its eleventh session, the Ad Hoc Committee agreed that this article should be deleted as it overlapped with article 32 of the convention and on the understanding that the provisions of the convention would apply mutatis mutandis to the protocol (see article 1 of the present protocol).

National statements

Note by the Secretariat

1. The representative of Egypt requested that the report of the Ad Hoc Committee on its twelfth session (A/55/383/Add.2) should indicate that, in the interest of not obstructing consensus on the draft protocol, he had expressed his Government's reservation with regard to the entire protocol in its current form, as it did not sufficiently reflect many of the views expressed during the negotiations.

Part Five

General Assembly resolutions

General Assembly resolution 55/25 of 15 November 2000

A. Negotiation texts

Tenth session: 17-28 July 2000

Draft resolution submitted by the Chairman (A/AC.254/L.224)

"United Nations Convention against Transnational Organized Crime

"The General Assembly,

"*Recalling* its resolution 53/111 of 9 December 1998, by which it established an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

"*Recalling also* its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with General Assembly resolutions 53/111 and 53/114 of 9 December 1998, and to intensify its work in order to complete it in 2000,

"*Recalling further* its resolution 54/129 of 17 December 1999, in which the General Assembly accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the Conference for a period of up to one week before the end of the Millennium Assembly in 2000,

"*Expressing its appreciation* to the Government of Poland for submitting a first draft of the Convention against Transnational Organized Crime to the General Assembly at its fifty-first session and for hosting the meeting of the open-ended intergovernmental group of experts established pursuant to General Assembly resolution 52/85 of 12 December 1997 in Warsaw in February 1998,

"*Expressing its appreciation* to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee on the Elaboration of the

United Nations Convention against Transnational Organized Crime in Buenos Aires in August 1998,

"1. *Takes note with appreciation* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime submitting the text of the draft United Nations Convention against Transnational Organized Crime to the General Assembly for its consideration and action, and commends the Ad Hoc Committee for its work;

"2. *Adopts* the United Nations Convention against Transnational Organized Crime annexed to the present resolution, and opens it for signature at the high-level political signing conference, to be held in Palermo from 11 to 15 December 2000, in accordance with resolution 54/129;

"3. *Decides* that, until the Conference of the Parties established pursuant to the Convention decides otherwise, the account specifically designated for the purpose of receiving voluntary contributions from States parties to provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs in relation to the implementation of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund;

"4. *Requests* the Secretary-General to designate the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat to serve as the secretariat for and at the direction of the Conference of the Parties established by the Convention;

"5. *Urges* all States to sign and ratify the Convention as soon as possible in order to ensure the speedy entry into force of the Convention;

"6. *Urges* donor countries to begin making adequate voluntary contributions to the account mentioned in paragraph 3 above for the provision of technical assistance to developing countries and countries with economies in transition, which they might require in preparation for the ratification of the Convention;

"7. *Requests* the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the Convention and to discharge the functions of secretariat of the Conference of the Parties."

Revised draft resolution submitted by the Chairman (A/AC.254/L.224/Rev.1)

Notes by the Secretariat

1. The original text of document A/AC.254/L.224/Rev.1 did not contain any footnotes. The footnotes contained in the present text have been inserted by the Secretariat in order to reflect a more comprehensive account of the deliberations of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime.

"*United Nations Convention against Transnational Organized Crime*

"*The General Assembly*,

"*Recalling* its resolution 53/111 of 9 December 1998, by which it established an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

"*Recalling also* its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with General Assembly resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

"*Recalling further* its resolution 54/129 of 17 December 1999, in which it accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the conference for a period of up to one week before the end of the Millennium Assembly in 2000,

"E*xpressing its appreciation* to the Government of Poland for submitting a first draft of the United Nations Convention against Transnational Organized Crime to it at its fifty-first session and for hosting the meeting of the open-ended intergovernmental group of experts established pursuant to General Assembly resolution 52/85 of 12 December 1997 in Warsaw in February 1998,

"E*xpressing its appreciation also* to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime in Buenos Aires in August 1998,

"[*Deeply concerned* by the negative economic and social impact of the activities of transnational organized crime [in all its manifestations and taking into account the links that exist between these and other illegal activities], and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional and international levels,][1]

"1. *Takes note* [with appreciation] of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime[, which carried out its work at the headquarters of the Office for Drug Control and Crime Prevention of the Secretariat in Vienna,][2] submitting the text of the draft United Nations Convention against Transnational Organized Crime to the General Assembly for its consideration and action, [and commends the Ad Hoc Committee for its work];

"2. *Adopts* the United Nations Convention against Transnational Organized Crime [and the protocols thereto][2] annexed to the present resolution, and opens it for signature at the high-level political signing conference, to be held in Palermo from 11 to 15 December 2000, in accordance with resolution 54/129;

[1]Based on a proposal submitted by the European Union (see A/AC.254/L.231).

[2]Proposal submitted by the European Union (see A/AC.254/L.231).

"3. *Urges* all States to sign and ratify the Convention [and the protocols thereto][2] as soon as possible in order to ensure the speedy entry into force of the Convention [and the protocols thereto][2];

"[4. *Decides that*, until the Conference of the Parties to the Convention established pursuant to the Convention decides otherwise, the account referred to in article 21 bis of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require for [preparation for the ratification of the Convention and] implementation of the Convention and the protocols thereto, including for the measures needed for that implementation];[1]

"[5. *Decides also* that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will complete its tasks arising from the elaboration of the Convention by holding a meeting well before the convening of the first session of the Conference of the Parties, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and other rules described in article 23, paragraph 2, of the Convention, which will be communicated to the Conference of the Parties [at its first session] for consideration and action;][3]

"6. *Requests* the Secretary-General to designate the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat to serve as the secretariat for and under the direction of[4] the Conference of the Parties;

"7. *Also requests* the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the Convention and to discharge the functions of secretariat of the Conference of the Parties [and to support the Ad Hoc Committee in its work pursuant to paragraph 5 above][2]."

Amendments to the draft resolution (A/AC.254/L.224) submitted by Egypt (A/AC.254/L.232)

1. Egypt proposed adding the following paragraphs after the fourth preambular paragraph:

"*Recalling* the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, adopted by the World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy, from 21 to 23 November 1994,[5] resolution 4 on the links between terrorist crimes and transnational organized crime, adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo from 29 April to 8 May 1995,[6] and the Vienna Declaration on Crime and Justice: Meeting the Challenges

[3]Proposal submitted by China (see A/AC.254/L.228).

[4]The European Union proposed that the words "at the direction of" should be replaced by the words "under the direction of" (see A/AC.254/L.231).

[5]See A/49/748, annex.

[6]See A/CONF.169/16.

of the Twenty-first Century, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000,[7] which recognized the threat posed by the growing links between terrorist crimes and organized crime,

"*Acknowledging* the need to apply the legal instruments designed to combat organized crime in the context of international efforts to eliminate terrorism,"

2. Egypt also proposed adding the following paragraph after operative paragraph 2:

"Calls upon all States to recognize the links between transnational organized criminal activities and acts of terrorism, and encourages States to apply the provisions of this Convention in combating those two forms of illegal activity;"

Amendments to the revised draft resolution (A/AC.254/L.224/Rev.1) submitted by the Chairman (A/AC.254/L.234)

1. After the sixth preambular paragraph, insert the following:

"*Noting with deep concern* the growing links between transnational organized crime and terrorist crimes,

"*Determined* to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level,

"*Strongly convinced* that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such crimes as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage, [...],"

2. Insert the following new operative paragraph before operative paragraph 1 and renumber the subsequent operative paragraphs accordingly:

"*Recommends* that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which is beginning its deliberations with a view to the development of a comprehensive convention on international terrorism, pursuant to Assembly resolution 54/110 of 9 December 1999, should take into consideration the provisions of the United Nations Convention against Transnational Organized Crime;"

3. The following paragraph should be inserted in the *travaux préparatoires*:

"During the negotiations of the United Nations Convention against Transnational Organized Crime, the Ad Hoc Committee noted with deep concern the growing links between transnational organized crime and terrorist crimes. All States participating in the negotiations expressed their determination to deny safe havens to those who engaged in transnational organized crime by prosecuting their

[7] See A/CONF.187/15.

crimes wherever they occurred and by cooperating at the international level. The Ad Hoc Committee was also strongly convinced that the Convention would constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such crimes as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage, [...]. Finally, the Ad Hoc Committee was of the view that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which was then beginning its deliberations with a view to the development of a comprehensive convention on international terrorism, pursuant to Assembly resolution 54/110 of 9 December 1999, should take into consideration the provisions of the Convention."

Draft resolution (see A/55/383, sect. IV)

"*United Nations Convention against Transnational Organized Crime*

"*The General Assembly*,

"*Recalling* its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

"*Recalling also* its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

"*Recalling further* its resolution 54/129 of 17 December 1999, in which it accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the conference for a period of up to one week before the end of the Millennium Assembly in 2000,

"*Expressing its appreciation* to the Government of Poland for submitting to it at its fifty-first session a first draft of the United Nations Convention against Transnational Organized Crime and for hosting the meeting of the open-ended intergovernmental group of experts established pursuant to resolution 52/85 of 12 December 1997, held in Warsaw from 2 to 6 February 1998,

"*Expressing its appreciation* to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, held in Buenos Aires from 31 August to 4 September 1998,

"*Expressing its appreciation* to the Government of Thailand for hosting the Asia-Pacific Ministerial Seminar on Building Capacities for Fighting Transnational Organized Crime, held in Bangkok on 20 and 21 March 2000,

"*Deeply concerned* by the negative economic and social implications related to organized criminal activities, and convinced of the urgent need to strengthen co-operation to prevent and combat such activities more effectively at the national, regional and international levels,

"*Noting with deep concern* the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly,

"*Determined* to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level,

"*Strongly convinced* that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes,

"1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, which carried out its work at the headquarters of the Office for Drug Control and Crime Prevention of the Secretariat in Vienna, and commends the Ad Hoc Committee for its work;

"2. *Adopts* the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime annexed to the present resolution, and opens them for signature at the high-level political signing conference to be held in Palermo, Italy, from 12 to 15 December 2000 in accordance with resolution 54/129;

"3. *Requests* the Secretary-General to prepare summary records of the high-level political signing conference to be held in Palermo in accordance with resolution 54/129;

"4. *Notes* that the Ad Hoc Committee has not yet completed its work on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;

"5. *Requests* the Ad Hoc Committee to continue its work in relation to this Protocol, in accordance with resolutions 53/111, 53/114 and 54/126, and to finalize such work as soon as possible;

"6. *Calls upon* all States to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein;

"7. *Recommends* that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which is beginning its deliberations with a view to developing a comprehensive convention on international terrorism, pursuant to Assembly resolution 54/110 of 9 December 1999, should take into consideration the provisions of the United Nations Convention against Transnational Organized Crime;

"8. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto;

"9. *Decides that*, until the Conference of the Parties to the Convention established pursuant to the United Nations Convention against Transnational Organized Crime decides otherwise, the account referred to in article 30 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require for implementation of the Convention and the protocols thereto, including for the preparatory measures needed for that implementation;

"10. *Decides also* that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will complete its tasks arising from the elaboration of the United Nations Convention against Transnational Organized Crime by holding a meeting well before the convening of the first session of the Conference of the Parties to the Convention, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and other rules and mechanisms described in article 32 of the Convention, which will be communicated to the Conference of the Parties at its first session for consideration and action;

"11. *Requests* the Secretary-General to designate the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention to serve as the secretariat for and under the direction of the Conference of the Parties to the Convention;

12. *Also requests* the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the United Nations Convention against Transnational Organized Crime and to discharge the functions of secretariat of the Conference of the Parties to the Convention and to support the Ad Hoc Committee in its work pursuant to paragraph 10 above."

Notes by the Secretariat

2. At its tenth session, the Ad Hoc Committee approved the revised draft resolution, as orally amended, by which the General Assembly would adopt the convention, on the understanding that, at its eleventh session, the Ad Hoc Committee would finalize the text of the draft resolution in order to take into account the results of that session with respect to the draft protocols, and submit it to the General Assembly for consideration and action at its fifty-fifth session (see A/55/383, para. 81). Also at its eleventh session, the Ad Hoc Committee decided to include in the draft resolution two paragraphs in which the Assembly

would note that the Ad Hoc Committee had not completed its work on the draft firearms protocol and would request it to finalize such work as soon as possible.

B. Approved text adopted by the General Assembly (see resolution 55/25)

United Nations Convention against Transnational Organized Crime

The General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 54/129 of 17 December 1999, in which it accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the conference for a period of up to one week before the end of the Millennium Assembly in 2000,

Expressing its appreciation to the Government of Poland for submitting to it at its fifty-first session a first draft United Nations convention against transnational organized crime and for hosting the meeting of the inter-sessional open-ended intergovernmental group of experts, established pursuant to resolution 52/85 of 12 December 1997, on the elaboration of a preliminary draft of a possible comprehensive international convention against transnational organized crime, held in Warsaw from 2 to 6 February 1998,

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998,

Expressing its appreciation to the Government of Thailand for hosting the Asia-Pacific Ministerial Seminar on Building Capacities for Fighting Transnational Organized Crime, held in Bangkok on 20 and 21 March 2000,

Deeply concerned by the negative economic and social implications related to organized criminal activities, and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional and international levels,

Noting with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly,

[8] A/C.3/51/7, annex.

Determined to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level,

Strongly convinced that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes,

1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime,[9] which carried out its work at the headquarters of the United Nations Office for Drug Control and Crime Prevention in Vienna, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime annexed to the present resolution, and opens them for signature at the High-level Political Signing Conference to be held in Palermo, Italy, from 12 to 15 December 2000 in accordance with resolution 54/129;

3. *Requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Palermo in accordance with resolution 54/129;

4. *Notes* that the Ad Hoc Committee has not yet completed its work on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;

5. *Requests* the Ad Hoc Committee to continue its work in relation to this draft Protocol, in accordance with resolutions 53/111, 53/114 and 54/126, and to finalize such work as soon as possible;

6. *Calls upon* all States to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein;

7. *Recommends* that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which is beginning its deliberations with a view to developing a comprehensive convention on international terrorism, pursuant to resolution 54/110 of 9 December 1999, should take into consideration the provisions of the United Nations Convention against Transnational Organized Crime;

8. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto;

9. *Decides* that, until the Conference of the Parties to the Convention established pursuant to the United Nations Convention against Transnational Organized Crime decides otherwise, the account referred to in article 30 of the

[10]A/AC.254/34.

Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require for implementation of the Convention and the protocols thereto, including for the preparatory measures needed for that implementation;

10. *Also decides* that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will complete its tasks arising from the elaboration of the United Nations Convention against Transnational Organized Crime by holding a meeting well before the convening of the first session of the Conference of the Parties to the Convention, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and other rules and mechanisms described in article 32 of the Convention, which will be communicated to the Conference of the Parties at its first session for consideration and action;

11. *Requests* the Secretary-General to designate the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention to serve as the secretariat for the Conference of the Parties to the Convention in accordance with article 33 of the Convention;

12. *Also requests* the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the United Nations Convention against Transnational Organized Crime and to discharge the functions of secretariat of the Conference of the Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 10 above.

Notes by the Secretariat

3. Two technical amendments were made orally by the Chairman of the Ad Hoc Committee at the fifty-fifth session of the General Assembly when introducing the draft resolution. The first amendment was in operative paragraph 3, where the words “summary records” were replaced by the words “a comprehensive report”. The second amendment was in operative paragraph 11, where the words “and under the direction of” were deleted and the words “in accordance with article 33 of the Convention” were added at the end of the paragraph. The General Assembly adopted the resolution as orally amended.[10]

[10]See *Official Records of the General Assembly, Fifty-fifth Session, Plenary Meetings*, 62nd meeting, agenda item 105.

General Assembly resolution 55/255 of 31 May 2001

A. Negotiation text

Twelfth session: 26 February-2 March 2001

Draft resolution submitted by the Chairman (A/AC.254/L.277)

"Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

"*The General Assembly*,

"*Recalling* its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

"*Recalling also* its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

"*Recalling further* its resolution 55/25 of 15 November 2000, by which it adopted the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,

"1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its twelfth session,[1] and commends the Ad Hoc Committee for its work;

[3]A/55/383/Add.2.

"2. *Adopts* the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and opens it for signature at United Nations Headquarters in New York;

"3. *Urges all States* and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto."

Notes by the Secretariat

1. At its twelfth session, the Ad Hoc Committee finalized and approved, as amended, the draft resolution by which the General Assembly would adopt the protocol (see A/55/383/Add.2). An additional preambular paragraph was included in the draft resolution, which made reference to the right to individual or collective self-defence and to the right of self-determination (for the latter, see the preamble and the chapter on deleted articles of the firearms protocol in part four).

2. The representative of the United States requested that the report of the Ad Hoc Committee on its twelfth session should indicate that her Government reserved its position on the inclusion of certain language in the draft resolution, but would not block the submission of the draft resolution and the draft protocol to the Assembly. In particular, the United States objected to the inclusion in the draft resolution of a preambular paragraph reaffirming, inter alia, the right of self-determination of peoples, in particular peoples under colonial or other forms of alien domination or foreign occupation. The United States considered that it was inappropriate for the Ad Hoc Committee to highlight the right of self-determination of any one group of people, in particular in a draft resolution by which the Assembly would adopt a law enforcement instrument. To the extent that such language had appeared in Assembly resolutions in the past, it had been accompanied by a number of paragraphs that together presented a far more balanced and objective characterization of the right of self-determination. The representative of the United Kingdom of Great Britain and Northern Ireland reserved his Government's position on the draft resolution until its consideration by the Assembly, but indicated that he would not obstruct the achievement of a consensus.

B. Approved text adopted by the General Assembly (see resolution 55/255)

The General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 55/25 of 15 November 2000, by which it adopted the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,

Reaffirming the inherent right to individual or collective self-defence recognized in Article 51 of the Charter of the United Nations, which implies that States also have the right to acquire arms with which to defend themselves, as well as the right of self-determination of all peoples, in particular peoples under colonial or other forms of alien domination or foreign occupation, and the importance of the effective realization of that right,

1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its twelfth session, and commends the Ad Hoc Committee for its work;

2. *Adopts* the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, annexed to the present resolution, and opens it for signature at United Nations Headquarters in New York

3. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto.

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