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

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Common provisions of the revised draft United Nations Convention against Transnational Organized Crime and the draft Protocols thereto

Report of the Chairman on the informal consultations

I. Introduction

1. Pursuant to its decision at its fifth session, held in Vienna from 4 to 15 October 1999, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime devoted part of the informal consultations at its sixth session, on 7 and 9 December 1999, to an overview of provisions that could be considered common to the revised draft United Nations Convention against Transnational Organized Crime and the draft Protocols thereto. The informal consultations were based on a note by the Secretariat (A/AC.254/21).

2. 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.

II. General considerations

3. The review of common provisions was carried out without prejudice to the content of those provisions or to the discretion of the Ad Hoc Committee regarding the drafting of such provisions. The review was also carried out on the understanding that the classification of the provisions could change, depending on the progress made in the drafting of the Convention and the Protocols thereto and issues that could emerge in that connection.

4. The purpose of the review was to ensure consistency and full compatibility among the instruments under consideration and to increase efficiency in the implementation of the mandate of the Ad Hoc Committee.

5. It was also understood that the discussion on common provisions was without prejudice to the final formulation of article 26 *bis* of the draft Convention, on the relation between the Convention and the Protocols.

III. Recommendations

6. It was agreed in the informal consultations that common provisions could be classified into three categories. The first category consists of key components of all four instruments. Provisions relating to such key components should be incorporated into the draft Convention and their applicability extended *mutatis mutandis* to each of the draft Protocols. The second category contains provisions concerning issues of relevance to the Convention and one or more of the Protocols. Whenever appropriate, the applicability of those provisions would also be extended *mutatis mutandis* to the Protocol(s) in question. However, the specificity of the Protocol(s) in question may require additional language. The third category contains the standard final clauses, which are customary in international legal instruments.

7. Participants at the informal consultations proceeded to classify the provisions in thematic clusters, in line with the note by the Secretariat (A/AC.254/21).

8. It was agreed that articles 7, 7 *bis* and 7 *ter* of the draft Convention, which deal with confiscation, would be placed in the second category. The corresponding provisions of the draft Protocols are article VII of the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, supplementing the United Nations Convention against Transnational Organized Crime (the Firearms Protocol) and article 5 *bis* of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking in Persons Protocol), which would require additional language, as appropriate. It was noted, for example, that the relevant provisions in the draft Convention dealt with the confiscation and disposal of the proceeds of crime, whereas the relevant provision in the Firearms Protocol dealt with the confiscation of contraband.

9. It was agreed that article 9 of the draft Convention, on jurisdiction, appeared to fall into the first category. However, the need for specific language on this matter in one or more of the draft Protocols may need to be explored.

10. It was agreed that articles 10 and 14 of the draft Convention, on extradition and mutual legal assistance, respectively, fell into the first category.

11. It was agreed that article 23 *ter* of the draft Convention, on implementation measures, fell into the first category, and that the Secretariat should be requested to revise the draft texts accordingly with a view to achieving the necessary harmonization. It was noted that an exception to this was article 9 of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the Migrants Protocol), which dealt with a specific issue that required appropriate language.

12. It was agreed that articles 19 and 20 of the draft Convention, on the exchange of information, fell into the second category. The corresponding provisions of the Protocols were articles 10 and 11 of the Migrants Protocol, article XIV of the Firearms Protocol and article 8 of the Trafficking in Persons Protocol, which required additional language.

13. It was agreed that article 21 of the draft Convention, on technical cooperation, fell into the first category. However, the attention of the Ad Hoc Committee should be drawn to the need to enhance that provision with elements found at present in the corresponding articles of the draft Protocols (article 14 of the Migrants Protocol and articles XVI and XVIII of the Firearms Protocol) in order to make such a provision fully applicable also to the Protocols.

14. It was agreed that the provisions falling into the third category, the final clauses, were articles 25, 26 and 27-30 of the draft Convention. The Secretariat should be requested to revise the texts of the draft Protocols by inserting identical provisions.

15. There was further discussion on the basis of a non-paper submitted by the delegation of Finland (A/AC.254/L.106). The meeting expressed its gratitude to the delegation of Finland for its very useful and constructive contribution. It decided to bring the non-paper to the attention of the Ad Hoc Committee, as a background document that might assist the Ad Hoc Committee when discussing the draft texts of the Convention and Protocols.
