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

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Agenda item 4

**Consideration of the draft convention against transnational organized crime****Proposals and contributions received from Governments on the  
draft United Nations Convention against Transnational  
Organized Crime****Contents**

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**I. Introduction**

The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime the comments and proposals of the Governments of Canada and Colombia that relate to the draft United Nations Convention against Transnational Organized Crime.

## II. Proposals and contributions received from Governments

### Canada

[Original: English]

#### *Article 2*

##### *Scope of application*

This Convention shall, except as otherwise provided herein,<sup>1</sup> apply to the prevention, investigation and prosecution of serious crime involving an organized criminal group as defined in article 2 bis and to the offences established in articles 3 and 4 [pertaining to the offences of participation in criminal organization and money-laundering, respectively].

#### *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.

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<sup>1</sup> In certain cases, due to the fact that an investigation is at a preliminary stage, it may not be possible for a requested State to establish with certainty that a particular offence is connected to organized crime. The Committee should, therefore, take this into consideration in determining the scope of application of the various articles dealing with international cooperation, such as mutual assistance.

## Colombia

[Original: Spanish]

### *Article 1*

#### *Statement of objectives*

It is suggested that options 1 and 2 be combined as follows:

- “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.”

### *Article 2 bis*

#### *Use of terms*

It is proposed that article 2 *bis* be supplemented with the following definitions:

“For the purposes of this Convention:

“ ‘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;

“ ‘Property’ means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

“ ‘Proceeds of crime’ means property of any description derived or obtained directly or indirectly from the commission of an offence under this Convention;

“ ‘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;

“ ‘Confiscation’ means permanent dispossession of property, proceeds or instrumentalities of an offence by decision of the competent authority.”

### *Article 2*

#### *Scope of application*

With regard to article 2, “Scope of application”, a merging of texts is proposed, as described below:

Option 2 is adopted, with the deletion of paragraph 2 and the inclusion of option 3 in its place, without the definition of organized crime. Therefore, the proposed paragraph 2 will refer only to the conventions listed.

With regard to paragraph 3 (d) of option 2, it is suggested that the meaning of the phrase “significant ... means for its commission” be made clearer, since the important aspect in such a situation is the intent, as reflected in the planning of the offence, the means used for its commission being of little significance.

As regards paragraph 1 (f) of option 3, concerning acts of terrorism, it is suggested that reference be made to the relevant United Nations conventions, as follows:

“(f) Acts of terrorism as defined in the United Nations conventions;”.

For subparagraph (g), the following wording is proposed: “Illicit manufacture of and traffic in firearms, their parts and components, and ammunition”.

At the end of subparagraph (h), add the phrase “, their parts and components”.

Add to subparagraph (i) the phrase “and officials of private institutions”.

With a view to applying the Convention in the widest possible manner, it is suggested that a paragraph 2 be included, as follows:

“2. For the purposes of this Convention, such acts shall be understood as offences even though they may be defined with different designations in the States Parties’ domestic law.”