



16 March 1999

Original: English

**Ad Hoc Committee established by General Assembly
resolution 51/210 of 17 December 1996**

Third session
15–26 March 1999

Proposal submitted by Austria on the definition of offences

Option 1. Articles 2, 20 *bis* and Annex

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of an organization with the knowledge or intent that such financing will be used by that organization, in full or in part, to commit or to prepare the commission of:

(a) An offence within the scope of one of the Conventions listed in the Annex and as specified therein;

(b) An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, constitutes a means of intimidating a Government or the civilian population.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article.

Article 20 *bis*

On depositing its instruments of ratification, acceptance, approval or accession, a State which is not a party to a treaty listed in the Annex may declare in writing that, in the application of this Convention to that State Party, that treaty shall not be deemed to be included in the Annex. Such declaration shall cease to have effect as soon as that treaty enters

into force for that State Party, which shall notify the depositary of that fact, and the depositary shall so notify the other States Parties.

Annex

1. Article 1 (a) of the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970, which reads as follows: ...
2. Article 1, paragraph 1, of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, which reads as follows: ...
3. Article 2, paragraph 1 (a)–(c), of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973, which reads as follows: ...
4. Article 1, paragraph 1, of the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, which reads as follows: ...
5. Article 7, paragraph 1 (e), of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980, which reads as follows: ...
6. Article II, paragraph 1, of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988, which reads as follows: ...
7. Article 3, paragraphs 1 (a)–(f) and 2 (c), of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, which read as follows: ...
8. Article 2, paragraphs 1 (a)–(d) and 2 (c), of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988, which read as follows: ...
9. Article 2, paragraph 1, of the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997, which reads as follows: ...

Rationale

1. Chapeau

(a) Deletion of reference to the financing of “a person”

Mere preparatory acts are usually not criminalized under national and international law. However, if the offence is of a particularly dangerous nature, exceptions from this principle are made. In the context of the offences covered by this Convention, this would seem to be true only of organizations. It is this aspect of organization, which typically includes long-term planning, continuity of purpose, division of labour and particular difficulty of detection, which renders these entities and their activities so dangerous that criminalizing the financing of mere preparatory acts seems justifiable. Similar reasoning does not apply to individuals. Furthermore, financing an individual in order to enable that individual to commit terrorist

offences would be a participatory offence falling under the scope of the Conventions listed in the Annex.

(b) Deletion of the term “could be used” and inclusion of the term “intent”

The term “could be used” would create too large a scope of application, since it can rarely be excluded that financing *could* be used for committing offences; knowledge may be difficult to prove, hence the addition of “intent”.

(c) Retention of preparatory acts insofar as they relate exclusively to organizations

Some reference to preparatory acts should probably be retained since this Convention would otherwise become largely redundant (financing terrorist offences is a participatory crime already covered by existing instruments); by deleting any reference to preparatory acts we would not cover some of the most important cases of financing, such as the financing of a training camp for terrorists.

2. Paragraph 1 (a)

(a) Reference only to the main offences of the Conventions contained in the Annex

The present unqualified reference to “offences within the scope of the Conventions listed in the Annex” creates the danger of very long chains of participation removing a reasonably close nexus to the main offence; the scope of application would become too large.

(b) Deletion of “subject to its ratification by the State Party” and inclusion of an opt-out clause instead

This would be more likely to create a reasonably uniform and certainly a clearer scope of application.

3. Paragraph 3

Deletion of subparagraph (c); same reasoning as in section 2 (a) above.
