



# General Assembly

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

Fourth session

Vienna, 28 June-9 July 1999

Agenda item 3

**Consideration of the draft United Nations Convention against  
Transnational Organized Crime, with particular emphasis  
on articles 4 *ter*, 5, 6, 9, 10 and 14**

## **Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime**

### **New Zealand: comments on articles 4 *ter*, 5, 6, 9, 10 and 14 of the revised draft United Nations Convention against Transnational Organized Crime**

#### **Article 4 *ter*: Measures against corruption**

1. New Zealand would prefer the first option in the article, being a less prescriptive approach to the treatment of organized crime in this article. The article should recognize the different legal frameworks in various Member States by providing more generally for the element of organized crime to be considered.

#### **Article 5: Corporate liability**

2. New Zealand would support the retention of the words “as appropriate” in paragraph 1 and the reference to “legal” rather than “corporate” persons throughout the article.
3. Civil liability of individuals should also be preserved, as suggested in paragraph 3.
4. New Zealand considers that the proposed paragraph 5 does not add substantially to the rest of the article and would not support it.

**Article 6: Effective implementation of the Convention**

5. With regard to paragraph 6, New Zealand would note that some States' constitutional arrangements provide for operationally independent prosecutorial discretion. It would accordingly be difficult to provide specific directions to prosecuting authorities.
6. New Zealand questions the utility of paragraph 9 and regards it as overly prescriptive. In any event, it would seem better placed in article 9.
7. New Zealand considers paragraph 10 to be already covered in article 9, paragraph 5, and would support its deletion.

**Article 9: Jurisdiction**

8. New Zealand has no issues to raise with the article as worded at present.

**Article 10: Extradition**

9. New Zealand considers that the provisions in the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/163, annex) provide a useful precedent for the form of extradition and mutual assistance provisions in this Convention.
10. New Zealand would prefer the use of the discretionary term "may" in paragraph 3.
11. New Zealand considers that the permitted grounds for refusal of extradition—some of which are outlined in paragraphs 6, 9 and 10—should all be contained together in the Convention.
12. With regard to paragraph 6, in the International Convention for the Suppression of Terrorist Bombings there is a separate article that deals with this common ground for refusal in relation to both extradition and mutual assistance. New Zealand considers that this would be a useful approach in the context of this draft Convention too.
13. New Zealand's preference with regard to paragraphs 9 and 10 would be to omit any provision relating to the refusal to extradite nationals.
14. New Zealand would prefer to retain the option of non-treaty based extradition and therefore questions the utility of retaining paragraph 12 (which requires countries to seek to conclude bilateral or multilateral agreements).
15. New Zealand would support the combination of paragraph 14 with the equivalent provision in article 14, on mutual legal assistance.

**Article 14: Mutual legal assistance**

16. New Zealand considers that the phrase "within the conditions prescribed by the domestic legislation" in paragraph 1 repeats what is already contained in paragraph 12. New Zealand also questions the use of the term "flexibility" in paragraph 1.
17. New Zealand agrees that paragraph 3 would be more appropriately subsumed into a general comment dealing with the relationship of the Convention to other treaties.
18. New Zealand considers that paragraph 7 should be followed by paragraph 20, on safe conduct. On a stylistic point, New Zealand wonders whether this paragraph could be redrafted in more general terms in order to remove the need for the detailed subparagraphs (a) - (d).

19. As already noted, New Zealand considers that paragraph 12 overlaps with article 1 and that one provision would suffice.

20. New Zealand considers that subparagraph (c) of paragraph 16 may be unnecessarily restrictive and would not oppose its deletion. New Zealand would also note that subparagraph (d) is very broad and considers that an “essential interests” ground for refusal would cover the concerns sought to be addressed here. New Zealand also considers that, as between Parties to the Convention, sufficient dual criminality should exist. Accordingly, subparagraph (e) is unnecessary and should be deleted.

21. As in the extradition context, New Zealand does not consider that an obligation to consider concluding agreements is necessary and paragraph 22 should be deleted accordingly.

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