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Draft report

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Addendum

Articles 2, 2 bis (subparagraph (a) only), 4, 4 bis, 4 ter, 4 quater, 7, 7 bis, 7 ter, 17, 17 bis, 18, 18 bis and 18 ter of the revised draft United Nations Convention against Transnational Organized Crime

Article 2 *Scope of application*^{1, 2}

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

(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.

¹ As decided by the Ad Hoc Committee at its seventh session, the order of articles 2 and 2 *bis* will be reversed in the final text.

² Paragraphs 1 and 2 of article 2 remain under review. The present text of these paragraphs was submitted by the delegation of 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 delegation of the Netherlands proposed that the text of subparagraph (b) of paragraph 2 be replaced with the following: "Its prevention, investigation or prosecution requires the cooperation of at least two States Parties".

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.³
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.

Article 2 bis
Use of terms
[Subparagraph (a) only.]

For the purposes of this Convention:

- (a) “Organized criminal group” shall mean a structured group of three or more persons⁴ existing for a period of time and acting in concert with the aim of committing 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;⁵

Article 4⁶
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 disguising⁷ the illicit origin of the

³ At the seventh session of the Ad Hoc Committee, the delegation of Poland proposed that paragraphs 3 and 4 be placed in a separate article.

⁴ The *travaux préparatoires* will indicate that the inclusion of a specific number of persons would not prejudice the rights of States Parties pursuant to paragraph 2 of article 23 *ter*.

⁵ 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. The Ad Hoc Committee agreed that this understanding would be reflected in the *travaux préparatoires*. 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 this concept was ambiguous. The delegation of Algeria proposed the addition of the words “or any other purpose”. That proposal was supported at the eighth session of the Ad Hoc Committee by the delegations of Egypt, Morocco and Turkey. At the same session, the delegation of Turkey stated that it could not accept the present formulation of this paragraph, which excluded not only crimes committed for purposes other than financial or material, but also the links between transnational organized crime and terrorist acts. Turkey strongly favoured annexing to the Convention an indicative list that included terrorist acts.

⁶ Except where indicated otherwise, this revised text was approved by the Ad Hoc Committee at its eighth session.

⁷ The *travaux préparatoires* will show that the words “concealing or disguising” should be understood to include preventing the discovery of the illicit origins of property.

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 disguise⁸ 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;⁹

(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;¹⁰

(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;¹¹

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

⁸ The note in the *travaux préparatoires* mentioned in footnote 7 will also apply to the words "concealment or disguise" contained in this subparagraph.

⁹ The *travaux préparatoires* will include a note to the effect that the phrase "associated with organized criminal groups" is intended to indicate criminal activity of the type in which organized criminal groups engage.

¹⁰ This subparagraph remains 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.

¹¹ In the *travaux préparatoires* it will be stated that 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.

[Old paragraphs 3 and 3 bis were deleted.]¹²

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.¹³

*Article 4 bis*¹⁴

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;¹⁵

(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,

¹² The substance of old paragraph 3 *bis* will be taken up in connection with article 15.

¹³ 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."

¹⁴ 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 by 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. At its eighth session, the Ad Hoc Committee deferred discussion of this article to its ninth session.

¹⁵ Subparagraph (a) will 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".

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.¹⁶

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.

*Article 4 ter*¹⁷
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:¹⁸

(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.

¹⁶ 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 delegation of the Islamic Republic of Iran, supported by several other delegations, including that of 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." The delegation of 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 to agree on its content.

¹⁷ Except where indicated otherwise, this revised text was approved by the Ad Hoc Committee at its eighth session.

¹⁸ At its eighth session, the Ad Hoc Committee 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.

At its sixth session, the Ad Hoc Committee agreed that the obligation under this article was not intended to include the actions of a person who acted under duress or undue influence.

[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 service¹⁹ 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.

*Article 4 quater*²⁰
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 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 by providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 7^{21, 22}
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 use²³ in offences covered by this Convention.

¹⁹ The *travaux préparatoires* should indicate that the concept of a person who provides a public service applies to particular legal systems and that the incorporation of this concept in the definition is intended to facilitate cooperation between parties with that concept in their legal systems.

²⁰ The text of this article was approved by the Ad Hoc Committee at its eighth session.

²¹ The text of this article was provisionally approved by the Ad Hoc Committee at its eighth session. The delegation of 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 stems from differing legal approaches and is similar to that encountered in relation to the scope of article 4. A similar matter may arise with respect to article 7 *bis* for those States which will 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*.”

²² The *travaux préparatoires* should indicate that the interpretation of this article takes 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, the *travaux préparatoires* should indicate that it is not the intention of the Convention to restrict the rules that apply to diplomatic or State immunity, including that of international organizations.

²³ The *travaux préparatoires* should indicate that 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 benefits²⁴ 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.

Article 7 bis²⁵

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 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 requesting Party in accordance with paragraph 1 of article 7, 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.

²⁴ The *travaux préparatoires* should indicate that this term is intended to encompass material benefits, as well as legal rights and interests of an enforceable nature, that are subject to confiscation.

²⁵ The text of this article was approved by the Ad Hoc Committee at its eighth session.

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 of this Convention 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;

(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.²⁶

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.

²⁶ The Ad Hoc Committee may wish to review this paragraph in the light of the final formulation of article 14.

*Article 7 ter*²⁷
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* 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 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. When acting on the request made by another State Party in accordance with articles 7 and 7 *bis* of this Convention, 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.

*Article 17*²⁸
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.

*Article 17 bis*²⁹
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:³⁰

(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

²⁷ The text of this article was approved by the Ad Hoc Committee at its eighth session. The *travaux préparatoires* should indicate that, 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 paragraph 2 of article 18.

²⁸ The text of this article was approved by the Ad Hoc Committee at its eighth session.

²⁹ Except where indicated otherwise, this revised text was approved by the Ad Hoc Committee at its eighth session.

³⁰ At its eighth session, the Ad Hoc Committee 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.

testimony or the production of evidence in a proceeding³¹ in relation to the commission of offences covered by this Convention;³²

(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.

*Article 18*³³
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.

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.

*Article 18 bis*³⁴
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.

³¹ The *travaux préparatoires* should indicate that the term “proceeding” is intended to cover all official governmental proceedings that may include the pre-trial stage of a case.

³² The *travaux préparatoires* should indicate that it is not intended to cover cases where a person has the right not to give evidence and an undue advantage is provided for the exercise of that right.

³³ The text of this article was approved by the Ad Hoc Committee at its eighth session.

³⁴ The text of this article was approved by the Ad Hoc Committee at its eighth session. The *travaux préparatoires* should indicate that, 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, also in the context of the provision of paragraph 1 of article 24 of the 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.

*Article 18 ter*³⁵

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:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;³⁶

(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 punishment³⁷ 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.

³⁵ Except where indicated otherwise, the text of this article was approved by the Ad Hoc Committee at its eighth session.

³⁶ At the eighth session of the Ad Hoc Committee, the delegation of Turkey reserved its position on the use of the term “organized criminal groups” until the finalization of article 2 *bis* of the draft Convention.

³⁷ The *travaux préparatoires* should indicate that this phrase might include not only prescribed but also de facto mitigation of punishment.