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

Seventh session

Vienna, 17-28 January 2000

Draft report

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I. Introduction

1. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime was established by the General Assembly in its resolution 53/111 of 9 December 1998.
2. In its resolution 54/126 of 17 December 1999, the General Assembly requested the Ad Hoc Committee to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify its work in order to complete it in 2000.

II. Organization of the session

A. Opening of the session

3. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime held its seventh session in Vienna from 17 to 28 January 2000. The Ad Hoc Committee held 20 meetings.
4. At its sixth session, held in Vienna from 6 to 17 December 1999, the Ad Hoc Committee had decided to consider at its seventh session articles 1-3, 5 and 6 of the revised draft United Nations Convention against Transnational Organized Crime, as well as to begin its second reading of the draft international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.
5. After the opening of the seventh session of the Ad Hoc Committee by its Chairman, the Officer-in-Charge of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention informed the Ad Hoc Committee that the Secretariat

was encountering difficulties in obtaining the required authorization from the Controller in the Department of Management of the Secretariat for payment of the local costs of representatives from the least developed countries, using extrabudgetary funds made available by certain Governments. Those difficulties stemmed from the fact that the Controller maintained that General Assembly resolution 53/111 did not provide a sufficient basis for departing from established rules and practice regarding the payment of such expenses. The Chairman informed the participants that the matter had been discussed in the bureau of the Ad Hoc Committee, which had recommended that the Ad Hoc Committee approve a draft resolution on the matter for adoption by the General Assembly. The bureau had also recommended that the Ad Hoc Committee authorize its Chairman to write to the Secretary-General and request that he personally intervene in order to resolve the matter. The Ad Hoc Committee approved the recommendation of its bureau on that matter.

6. The representative of Ecuador, speaking on behalf of the Group of Latin American and Caribbean States, said that the members of the Group of Latin American and Caribbean States had, from the beginning, actively and constructively participated in the negotiating of the draft Convention and its draft protocols, convinced of the importance of those negotiations. The members of the Group of Latin American and Caribbean States had supported the initiative of the States members of the Group of 77 and China at the sixth session of the Ad Hoc Committee regarding the inclusion in the draft Convention of an article on implementation of the Convention through economic development and technical assistance. While expressing the hope that the pace of negotiations would be vigorous, the members of the Group of Latin American and Caribbean States were of the view that attention should be given to drafting coherent and functional provisions that would meet the concerns of all States, thus ensuring the universality of the legal instruments. Regarding the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.1/Rev.4), the members of the Group of Latin American and Caribbean States were of the view that it was important to develop a legal instrument that would effectively target smugglers while protecting the rights of migrants. The members of the Group of Latin American and Caribbean States considered it important not to penalize migrants but to severely punish the organized criminal groups exploiting the vulnerable situation of migrants. Regarding 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 (A/AC.254/4/Add.3/Rev.5), the members of the Group of Latin American and Caribbean States emphasized the need for the instrument to make it possible to react quickly to illicit trafficking in persons, especially when the victims were children. The representative announced that the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (A/53/78, annex), adopted by the General Assembly of the Organization of American States, would enter into force on 9 February 2000, following the deposit of the tenth instrument of ratification. The members of the Group of Latin American and Caribbean States were interested in ensuring the rapid conclusion of the negotiations on the draft Firearms Protocol. The members of the Group of Latin American and Caribbean States were in favour of a recommendation by the Ad Hoc Committee to the Commission on Crime Prevention and Criminal Justice regarding the development of a broad international legal instrument against corruption.

7. At its 100th meeting, the Ad Hoc Committee approved a draft resolution submitted by its Chairman, entitled "Participation in the work of the Ad Hoc Committee on the

Elaboration of a Convention against Transnational Organized Crime” (A/AC.254/L.136). For the text of the draft resolution see annex [...] to the present report.

8. At its 101st meeting, the Ad Hoc Committee was informed by its Chairman that the matter of the assistance to least developed countries had been resolved for the seventh session. The Chairman requested that the Secretariat keep the matter under review in order to ensure that similar payments would be made at the remaining sessions of the Ad Hoc Committee, subject to the availability of extrabudgetary funds provided for that purpose.

B. Attendance

9. The seventh session of the Ad Hoc Committee was attended by representatives of [...] States. Also attending the seventh session were observers for entities maintaining permanent observer missions to the United Nations, organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

C. Adoption of the agenda and organization of work

10. At its 97th meeting, on 17 January 2000, the Ad Hoc Committee adopted the following agenda for its seventh session:

1. Opening of the seventh session of the Ad Hoc Committee.
2. Adoption of the agenda and organization of work.
3. Consideration of the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3, 5 and 6.
4. Implementation of General Assembly resolution 54/128, entitled “Action against corruption”.
5. Consideration of the additional international legal instruments against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.
6. Adoption of the report of the Ad Hoc Committee on its seventh session.

D. Documentation

11. At its seventh session, the Ad Hoc Committee had before it, in addition to the documents prepared by the Secretariat, documents containing proposals and contributions submitted by the Governments of Cameroon, Canada, China, France, Hungary, Norway, Switzerland, the Syrian Arab Republic, Tajikistan and the United States of America. A list of documents is contained in annex [...] to the present report.

III. Discussion on the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3, 5 and 6

12. At its 97th to 105th meetings, the Ad Hoc Committee discussed articles 1-3, 5 and 6 of the draft Convention. The Ad Hoc Committee based its work on the revised draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.6) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.17, A/AC.254/L.130, A/AC.254/L.132, A/AC.254/L.134 and A/AC.254/L.138). The Ad Hoc Committee also had before it revisions of and amendments to the draft Convention prepared by informal working groups, either at the request of the Chairman or on the basis of the Chairman's summaries (A/AC.254/L.139 and A/AC.254/L.140). Having completed the second reading of the draft Convention at its sixth session, the Ad Hoc Committee, in accordance with the relevant recommendation of its Chairman, began the process of reaching agreement on the final text. The progress achieved by the Ad Hoc Committee at its seventh session will be reflected in a new version of the draft Convention.¹

13. The Ad Hoc Committee approved articles 1 and 5 of the draft Convention, without amendment. The approved text of those articles was included in document A/AC.254/L.147/Add.2.

14. The Ad Hoc Committee provisionally approved paragraphs 3 and 4 of article 2, as amended. However, the Ad Hoc Committee decided to keep paragraphs 1 and 2 of article 2 under review and revert to the text in the light of the results of future negotiations on other articles of the draft Convention that might have a bearing on the scope of the instrument. The Ad Hoc Committee also decided to use as a basis for further consideration of those paragraphs the text proposed by the representative of the Netherlands, in her capacity as the coordinator of an informal working group set up to discuss paragraphs 1 and 2 of article 2 at the request of the Chairman of the Ad Hoc Committee. The new version of paragraphs 1 and 2 and the approved text of paragraphs 3 and 4 of article 2 were included in document A/AC.254/L.147/Add.2.

15. The Ad Hoc Committee approved subparagraphs (b)-(i) of article 2 *bis*, as amended. The Ad Hoc Committee decided to keep the current text of subparagraph (a) as the basis for further consideration, also in connection with article 2 of the draft Convention. The Ad Hoc Committee also decided to reconsider the substance of subparagraph (k) of article 2 *bis* when finalizing the text of article 4 *bis* of the draft Convention. The new version of article 2 *bis*, including the approved text thereof, was included in document A/AC.254/L.147/Add.2.

16. In the discussion on the definition of the term "structured group", the Ad Hoc Committee decided that the *travaux préparatoires* would include a note to the effect that the term was to be used in a broader sense and that it would include both groups with a hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members of the group need not be formally defined. There need not be continuity in the composition of the group. However, the term would not include groups formed on an ad hoc basis for the immediate commission of an offence, such as groups formed randomly in the course of a riot.

¹ To be issued subsequently as document A/AC.254/4/Rev.7.

17. The Ad Hoc Committee also approved articles 3 and 6 of the draft Convention, as amended. The approved text of those articles was included in document A/AC.254/L.147/Add.2.

18. In connection with paragraph 4 of article 6, on early release or parole (A/AC.254/L.147/Add.2), the Ad Hoc Committee decided that the *travaux préparatoires* would include a note to the effect that paragraph 4 would not oblige States Parties to provide for early release or parole to imprisoned persons if the legal systems of the States Parties in question did not provide for early release or parole. It was the understanding of the Ad Hoc Committee that paragraph 4 would not apply to those legal systems that did not foresee the possibility of early release or parole.

19. The Ad Hoc Committee decided that, at a later stage in its deliberations, it would ensure consistency in the wording of clauses containing references to national legal principles or systems.

IV. Discussion on the implementation of General Assembly resolution 54/128, entitled “Action against corruption”

20. At its sixth session, the Ad Hoc Committee decided to consider the implementation of General Assembly resolution 54/128 of 17 December 1999, entitled “Action against corruption”. In that resolution, the Assembly had requested the Ad Hoc Committee to explore the desirability of an international instrument against corruption, either ancillary to or independent of the United Nations Convention against Transnational Organized Crime, to be developed after the finalization of the Convention and the three protocols thereto, and to present its views to the Commission on Crime Prevention and Criminal Justice.

21. The Ad Hoc Committee considered item 4 of its agenda at its 106th meeting, on 21 January 2000. The Ad Hoc Committee was of the view that an effective international legal instrument against corruption was desirable. The Ad Hoc Committee agreed that such an international instrument should be independent of the United Nations Convention against Transnational Organized Crime and that its drafting should commence following the completion of the negotiations on the draft Convention and the draft protocols thereto. The Ad Hoc Committee was of the view that the terms of reference of the new instrument should be based on sound preparatory work, which would include a thorough review and analysis of all relevant international instruments and recommendations. The analysis should be undertaken by the Secretariat in consultation with Member States and should be submitted to the Commission on Crime Prevention and Criminal Justice at its tenth session. The Ad Hoc Committee discussed whether the General Assembly should be requested to extend the current mandate of the Ad Hoc Committee to enable it to develop the new instrument, on the basis of a recommendation by the Commission to the General Assembly. It was noted that, in considering that matter, it would be advisable for the Commission to take into account the experience and expertise acquired by the Ad Hoc Committee in developing the draft Convention and its draft protocols, as well as the need to build on the success of the Ad Hoc Committee in dealing with such complex matters. It was agreed that the Ad Hoc Committee would transmit its views and recommendations on the implementation of Assembly resolution 54/128 to the Commission at its ninth session for appropriate action.

V. Discussion on the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

22. At its 107th to 116th meetings, the Ad Hoc Committee discussed the additional legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. It based its work on a document containing the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.2/Rev.3) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.18, A/AC.254/L.129, A/AC.254/L.133, A/AC.254/L.137, A/AC.254/L.142 and A/AC.254/L.143). The Ad Hoc Committee was informed of a legal opinion provided by the Office of Legal Affairs of the Secretariat regarding the interpretation of General Assembly resolution 54/127 of 17 December 1999. Following a discussion on the matter, the Ad Hoc Committee at its seventh session decided to remove references to explosives from the draft Protocol. The delegation of Mexico reserved its right to revert to the question.

23. At its seventh session, the Ad Hoc Committee completed its second reading of the draft Protocol, aware of the discussion in the informal consultations on the common provisions between the draft Convention and the draft protocols thereto. The new version of the articles of the draft Protocol considered by the Ad Hoc Committee at its seventh session was included in document A/AC.254/L.147/Add.3. The progress achieved on the draft Protocol by the Ad Hoc Committee at its seventh session will be reflected in a new version of the draft Protocol.²

VI. Informal consultations

24. At its fourth session, the Ad Hoc Committee had decided that, in future, informal consultations should be organized in order to facilitate the implementation of its mandate.

25. At its sixth session, the Ad Hoc Committee had decided to devote the informal consultations to be held from 18 to 21 January 2000 to the consideration of the additional international legal instrument against trafficking in persons, especially women and children, and common provisions of that instrument and the additional international legal instrument against illegal trafficking in and transporting of migrants. Also at its sixth session, the Ad Hoc Committee decided to devote the informal consultations to be held from 24 to 27 January 2000 to the consideration of articles 4, 4 *bis*, 4 *ter*, 4 *quater*, 7, 7 *bis*, 7 *ter*, 17, 17 *bis*, 18, 18 *bis* and 18 *ter* of the draft Convention, in preparation for the finalization of those articles by the Ad Hoc Committee at its eighth session. The documents made available to the Ad Hoc Committee for its informal consultations were A/AC.254/4/Rev.6, A/AC.254/4/Add.3/Rev.5, A/AC.254/4/Add.2/Rev.3, A/AC.254/5/Add.17, A/AC.254/5/Add.19, A/AC.254/L.135, A/AC.254/L.141 and A/AC.254/L.144.

² To be issued subsequently as document A/AC.254/4/Add.2/Rev.4.

26. The recommendations of the informal consultations (A/AC.254/L.145 and A/AC.254/L.146) were submitted to the Ad Hoc Committee by the chairmen of the informal consultations.

VII. Adoption of the report of the Ad Hoc Committee on its seventh session

27. At its 106th meeting, on 28 January 2000, the Ad Hoc Committee adopted the report on its seventh session (A/AC.254/L.147).

28. At the same meeting, the Ad Hoc Committee approved the provisional agenda and proposed organization of work for its eighth session, to be held in Vienna from 21 February to 3 March 2000 (A/AC.254/L.147/Add.1).³

³ To be issued subsequently as document A/AC.254/26.

Annex [...]

Draft resolution submitted by the Chairman

The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime requests the General Assembly to give urgent attention to the following draft resolution:

*“Participation in the work of the Ad Hoc Committee
on the Elaboration of a Convention against
Transnational Organized Crime*

“The General Assembly,

“Recalling its resolution 53/111 of 9 December 1998, in which it invited donor countries to cooperate with developing countries to ensure their full participation in the work of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime,

“Recalling also other pertinent resolutions and the Secretary-General’s bulletin^a on rules governing payment of travel expenses and subsistence allowances in respect of members of organs or subsidiary organs of the United Nations,

“Recalling further the reports of the Ad Hoc Committee on its first^b and sixth^c sessions and the valuable contribution of the delegations of least developed countries to the preparation of the draft United Nations Convention against Transnational Organized Crime,

“Commending donor countries for their financial contributions to the United Nations Crime Prevention and Criminal Justice Fund to support financially the participation of least developed countries in the work of the Ad Hoc Committee,

“Requests the Secretary-General, using extrabudgetary resources provided for that purpose, to reimburse and continue to cover the travel expenses of representatives of least developed countries, in order to enable them to attend the sessions of the Ad Hoc Committee, and to provide financial support to the representatives of those countries, in order to assist them in meeting local expenses, to the extent that extrabudgetary resources permit.”

^a ST/SGB/107/Rev.6.

^b A/AC.254/9.

^c A/AC.254/23 and Corr.1.