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

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Agenda item 3

**Consideration of the draft United Nations Convention against
Transnational Organized Crime, with particular emphasis
on articles 4, 4 bis, 7, 7 bis, 7 ter, 10, 14 (paragraphs 14-22) and 15-19**

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

Syrian Arab Republic: comments on the revised draft United Nations Convention against Transnational Organized Crime

1. Having reviewed the Arabic version of the revised draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.3 and 4), the Syrian Arab Republic would like to make a number of comments on articles 4, 4 bis, 7, 7 bis, 7 ter, 10, 14 (paras. 14-22), 15 and 19.

Article 4

Paragraph 1

2. Delete brackets, in line with the text of article 3, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.¹

3. The definition of “money-laundering” proposed by Mexico should be inserted in article 2 bis.

Paragraph 1 (a)

4. Delete brackets.

Paragraph 1 (b)

5. Delete brackets.

Paragraph 1 (c)

6. Add the word “deposit,” after the word “exchange.”
7. Add the word “granting,” after the word “investment”.
8. Delete the words “[or subsequently]”, to protect the legitimate rights of bona fide persons; and to bring the text into line with that of article 3, paragraph 1 (c) (i), of the 1988 Convention.

Paragraph 1 (d)

9. Change the words “and aiding, abetting, facilitating” to read “or aiding, abetting or facilitating”, to be compared with the text of article 3, paragraph 1 (c) (iv), of the 1988 Convention.

Paragraph 1 (e)

10. Delete paragraph 1 (e), because it is ambiguous and there is no similar text in the 1988 Convention.

Paragraph 1 *bis*

11. Delete paragraph 1 *bis*, because it is in conflict with paragraph 1, and in order not to weaken the effectiveness of the Convention.

Paragraph 2 (a)

12. Add the words “, taking into consideration the double criminality clause.” at the end of paragraph 2 (a).

Paragraph 2 (b)

13. Delete paragraph 2 (b), because it is in conflict with paragraph 1, (a).

Paragraph 3

14. Replace the words “, in any or all of these cases” and subparagraphs (a), (b) and (c) by the words “, when they are committed through negligence”.

Article 4 *bis*

15. Adopt option 1.

Paragraph 5

16. Change the words “States Parties should consider, in particular, the forty recommendations” to read: “The States Parties may be guided by the forty recommendations”, because it is not appropriate for a group of States to set norms in an international instrument in a binding language for implementation by the States Parties thereto.

Article 7**Paragraph 2**

17. Add the words “, property, equipment or means”, after the word “item”, along the lines of article 5, paragraph 2, of the 1988 Convention.
18. Replace “, freezing” with the words “and freezing”, in line with article 5, paragraph 2, of the 1988 Convention.

Paragraph 5

19. Add the words “the equivalent of” after the words “up to”, to be compared with the text of of article 5, paragraph 6 (b) of the 1988 Convention.

Paragraph 8

20. Replace the words “bona fide third parties” by the words “mala fide third parties”, to be compared with the text of article 5, paragraph 8, of the 1988 Convention.

Article 7 bis**Paragraph 1 (b)**

21. Replace the words “in accordance with paragraph 1 of this article” by the words “in accordance with paragraph 1 of article 7”, to be compared with the text of article 5, paragraph 4 (a) (ii), of the 1988 Convention.
22. Replace the word “situated” with the words “that exist”.

Paragraph 5

23. Replace the words “this paragraph” by the words “this article”, because what is meant is article 7 bis, not paragraph 5 itself. The words “this paragraph” in article 5, paragraph 4 (e), of the 1988 Convention refer to article 5, paragraph 4, as a whole, which corresponds to article 7 bis of the draft United Nations Convention against Transnational Organized Crime.

Paragraph 6

24. Replace the words “that party shall consider” by the words “it shall consider”.

Paragraph 8

25. Replace the words “a criminal organization” by the words “an organized criminal group”, because article 2 bis contains a definition of an organized criminal group, not a criminal organization.

Paragraph 9

26. Replace the words “bona fide third parties” by the words “mala fide third parties”, to be compared with the text of article 5, paragraph 8, of the 1988 Convention.

Article 7 *ter*

Paragraph 2

27. Replace the words “with this article” by the words “with articles 7 and 7 *bis*”. The words “with this article” in article 5, paragraph 5 (b), of the 1988 Convention refer to article 5 of that Convention, which corresponds to articles 7 and 7 *bis* of the draft Convention.

Article 10

Paragraph 1

28. Retain the text of paragraph 1 as it is. The Syrian Arab Republic does not support the adoption of the proposal contained in footnote 93, because the minimum and maximum deprivation of liberty for a serious offence will be specified in article 2 *bis* (b), and paragraph 1 of article 6 stipulates that the grave nature of those offences should be taken into account in determining the sanctions.

Paragraph 2

29. The Syrian Arab Republic does not support the adoption of the proposal contained in footnote 94, because the inclusion of a paragraph on double criminality is tantamount to repeating the obvious.

Paragraph 3

30. Although the verb “may” is used in article 6, paragraph 3, of the 1988 Convention, it would be better to use the verb “shall” instead, because article 10, paragraph 2, of the draft Convention stipulates that each of the offences to which article 10 applies should be deemed to be included in the existing extradition treaties.

Paragraph 6

31. The Syrian Arab Republic supports the proposal by China to add the following sentence at the end of paragraph 6:

“Before declining to extradite under this paragraph, the requested State Party has to consult with the requesting State Party to give it ample opportunity to express its views and submit the information related to its allegations.”

32. The Syrian Arab Republic supports the proposal by Italy to insert after paragraph 6 a provision concerning persons sentenced *in absentia*, reading as follows:

“1. The fact that a judgement has been issued in absentia shall not be ground for refusal if it appears that the case has been tried with the same guarantees as when the defendant is present and if one of the following has occurred:

“(a) The defendant, having knowledge of the trial, has deliberately avoided being arrested; or

“(b) The defendant, having been regularly summoned, has deliberately failed to appear at the trial.

“2. When such conditions are not met, extradition shall in any case be granted if the requesting State gives assurance, deemed satisfactory by the requested State, that

the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence.”

Paragraph 7

33. Retain the wording of the first sentence as it is.
34. The Syrian Arab Republic supports the proposal by Poland to amend the second sentence so as to read:

“State Parties shall consider surrendering to each other, subject to their domestic law, under speedy and simplified procedures any persons sought for the purpose of extradition, subject to the agreement of the requested State and the consent of such persons, provided that the consent has been expressed voluntarily and in full awareness of the consequences. The requested State shall afford such persons the right to legal counsel.”

Paragraph 9 (a)

35. There is no need for the phrase “for the purpose of prosecution”, because the person may be an offender or an alleged offender, and the phrase “for the purpose of prosecution” relates only to an alleged offender.
36. It is better to retain the phrase “subject to the condition of double criminality”.
37. Delete the last sentence that begins with the words “Those authorities shall ...”.

Proposed additional paragraph

38. The Syrian Arab Republic supports the proposal by India (A/AC.254/L.43) to add, after paragraph 10, a paragraph concerning requests from more than one State for the extradition of the same person or persons as follows:

“If the extradition of the same person or persons, whether for the same offence or for different offences, under this Convention, is requested by more than one State Party, the requested State Party shall determine to which State the person or persons shall be extradited first. In determining this, the requested State shall give due consideration to the following factors:

- “(a) The severity of the offences for which extradition has been sought by the requesting States Parties;
- “(b) The nationality of the person or persons whose extradition has been sought;
- “(c) The dates of the receipt of the requests for extradition;
- “(d) Any other factor that the requested State may consider expedient.”

Paragraph 14

39. Retain this paragraph in the context of article 10.

Additional paragraphs proposed by Poland (A/AC.254/5/Add.7)

40. There is no need to insert proposed paragraph 15, since States have reaffirmed that their jurisdiction is established in accordance with paragraphs 1 and 2 of article 9.

41. It is noteworthy that article 14, paragraph 17, includes a provision similar to proposed paragraph 16.

42. It would be better to limit proposed paragraph 17 to refusing extradition, if the request is based on acts that do not constitute an offence under the law of the requested State Party.

Article 14

Additional paragraphs proposed by Italy (A/AC.254/5/Add.8)

43. Italy proposed the insertion of the following paragraph after paragraph 13:

“2. Each application for a hearing by videoconference shall contain, in addition to the details referred to in paragraph 10 of this article, a statement of the reasons why it is not possible or desirable for the witness or expert to attend, the names of the persons who are to conduct the hearing and their status.”

Commentary. This paragraph should be redrafted in clear and accurate language, because it is understood from the text of paragraph 1, to which it is proposed to add this paragraph, that the request for holding a hearing shall be submitted by the State requesting legal assistance. Hence, that State cannot include in its request the reasons why it is impossible for the witness or the expert to attend, because the State receiving the request understands those reasons. The Syrian Arab Republic therefore suggests that the words “a statement of the reasons why it is not possible or desirable for the witness or expert to attend,” be deleted from this paragraph.

44. Italy also proposed the insertion of the following paragraph after paragraph 13:

“4. ...

“(c) If the individual to be heard is unable to understand, he or she shall be assisted by an interpreter to be provided by the requesting State;”

Commentary. A gap after the word “unable” in the Arabic translation of paragraph 4 (c) should be filled.

Paragraph 16 (c)

45. Retain this paragraph and clarify what is meant by the words “similar offence”.

46. The United States of America (A/AC.254/L.33) proposed to change the wording of paragraph 16 (c) to read:

“If the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosegender, race, religion, nationality or political opinion;”

The Syrian Arab Republic considers that the proposed text should be regarded as an additional subparagraph, and that a consolidated wording of this subparagraph and article 10, paragraph 6, concerning extradition should be prepared.

47. The United States also proposed to change the text of paragraph 16 (d) to read:

“If the request relates to an offence that is considered by the requested State Party to be a political offence;”

The Syrian Arab Republic considers that the proposed text should be regarded as an additional subparagraph and that a provision similar to the provision of this subparagraph should be added to article 10 relating to extradition.

48. China (A/AC.254/L.50) proposed to change the text of paragraph 16 (c) to read:

“If the execution of the request would be contrary to the fundamental principles of the laws of the requested State Party;”

The Syrian Arab Republic considers that the proposed text should be regarded as an additional subparagraph.

49. China also proposed to change the text of paragraph 16 (d) to read:

“(d) If the requested State Party has already rendered a final judgement on the same suspect or defendant for the same offence in relation to which the request was made;”

The Syrian Arab Republic considers that the proposed text should be regarded as an additional subparagraph.

Paragraph 20

50. The Syrian Arab Republic endorses the proposal by the United States (A/AC.254/L.33) to replace the first sentence of paragraph 20 by the following:

“If the central authority of the requesting State Party requests that a person appear in the requesting State to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding and the person does appear, he shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty by reason of any acts or convictions that preceded his departure from the requested Party.”

Article 15

Paragraph 1

51. Retain the words “, within their possibilities,”.
52. Retain the word “appropriate”.
53. Replace the words “to provide a legal basis for” with “to provide for”.
54. Delete the words “in an offence established in article(s) [...]”.

Paragraph 2 bis

55. Delete the square brackets.

Paragraph 3

56. Change the text of paragraph 3 to read as follows:

“In decisions relating to the use of special investigative techniques at the international level, consideration should be given to financial arrangements and understanding concerning the exercise of jurisdiction by the State Parties concerned.”

Article 19

Paragraph 2

57. Delete “[endeavour to]”, to bring the text into line with article 9, paragraph 1, of the 1988 Convention.

Paragraph 2 (b), (iii)

58. The word “instrumentalities” should be replaced by the word “items”, to be compared with the text of article 9, paragraph 1 (b) (iii), of the 1988 Convention.

Paragraph 2 (c)

59. Replace “shall act as authorized by” by the words “shall abide by the instructions of”, to be compared with the text of article 9, paragraph 1 (c), of the 1988 Convention.

Paragraph 2 (d)

60. Delete the words “necessary items or” and insert the word “seized” before the word “substances”, to be compared with the text of article 9, paragraph 1 (d), of the 1988 Convention.

Paragraph 3 (b)

61. Insert the words “, preserve the confidentiality of exchanged information” after the words “in accordance with their national law”.

Paragraph 4 (a)

62. Insert the words “, within their possibilities,” after the word “designate”.

Notes

¹ *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).