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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

Report of the informal group convened at the request of the Chairman to review the alternative proposals for article 10, paragraph 9 (a), of the draft United Nations Convention against Transnational Organized Crime

1. At the request of the Chairman of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, an informal group was convened to review the alternative proposals for article 10, paragraph 9 (a), of the draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.4).
2. The proposals of the informal group are presented below.

Paragraph 9

Subparagraph (a)

9. (a) The State Party in the territory of which the offender or the alleged offender is found shall, in cases where this [Convention] [*alternative*: article [A/AC.254/L.75]] applies, if it does not extradite that person [for the purpose of prosecution]

Option 1: solely on the basis of his or her nationality [A/AC.254/L.72];

Option 2: on the ground that the person whose extradition is sought is its own national or that a type of punishment which does not exist in the requested Party may be imposed on that person in the requesting Party [A/AC.254/L.75]

Option 3: [include neither of the above options] [A/AC.254/L.34]

be obliged, upon request of the State Party seeking extradition, whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution [provided that it has established jurisdiction over such offence under article 9 of this Convention [A/AC.254/L.64]] [subject to the condition of double criminality], through proceedings in accordance with the laws of that State.

Option 1: Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State [*original version*; A/AC.254/L.72, A/AC.254/L.75].

Option 2: Those authorities shall take their decision taking into account the serious nature of the offence [A/AC.254/L.64].

Option 3: [include neither of the above options] [A/AC.254/L.34]

Subparagraph (a) bis

(a) *bis* Notwithstanding subparagraph (a) of this paragraph, if a State Party considers the offence for which the extradition is sought not generally to be associated with the activities of an organized criminal group, the State Party shall not be required to take measures provided in that subparagraph. [A/AC.254/L.75]

New subparagraph (a) ter

Option 1:

(a) *ter* The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution. [A/AC.254/L.64]

Option 2:

(a) *ter* A State Party that submits a case for prosecution following the denial of extradition on grounds of nationality shall treat the investigation and prosecution with diligence, shall devote sufficient resources to conduct the matter effectively and shall coordinate with the requesting State. It shall ensure that its mutual assistance, procedural and evidentiary laws enable effective action to be taken on the basis of evidence obtained from another State. [A/AC.254/L.33]
