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

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### **Common provisions of the revised draft United Nations Convention against Transnational Organized Crime and the draft Protocols thereto**

#### **Finland: non-paper comparing the common provisions of the revised draft United Nations Convention against Transnational Organized Crime and the three draft Protocols**

1. The present non-paper is intended to supplement the note by the Secretariat on the common provisions of the revised draft United Nations Convention against Transnational Organized Crime and the draft Protocols thereto (A/AC.254/21). It seeks to identify further provisions that are common to the draft Convention and one or more of the draft Protocols. A review of the texts would suggest three further clusters of provisions:

(a) Provisions on the protection of victims (article 18 *bis* of the draft Convention and articles 4, 5 and 7 of 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; see also article 18 of the draft Convention, on the protection of witnesses and victims);

(b) Provisions on prevention (articles 22 and 22 *bis* of the draft Convention, article 12 of the draft Protocol against Trafficking in Persons and article 11 of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime;

(c) Provisions on reports from States Parties (article 22 *ter* of the draft Convention and article 16 of the draft Protocol against the Smuggling of Migrants).

2. There are a number of provisions in the different instruments that have similar titles but almost have to be drafted differently and thus would not seem to be likely candidates for being identified as “common provisions”. Examples are the provisions on the purpose and scope of application of each instrument, the definition of terms and the provisions requiring States Parties to criminalize certain conduct.

3. In addition, the following provisions of the draft Convention\* have potential applicability to all three of the draft Protocols, even though they have not been incorporated into the text of any of the draft Protocols:

Article 4 *bis*: Measures to combat money-laundering

Article 4 *ter*: Measures against corruption

Article 5: Liability of legal persons

Article 6: Prosecution, adjudication and sanctions

(Article 17 *bis*: Bribery of witnesses and intimidation of witnesses and officials)

Article 18: Protection of witnesses and victims

Article 18 *ter*: Measures to enhance cooperation with law enforcement authorities

Article 23: Role of the United Nations and other relevant organizations (option 1); Monitoring of implementation (option 2); Conference of the Parties to the Convention (option 3)

Article 23 *bis*: Secretariat

Article 24: Relation with other conventions

4. Articles 10 *bis* (Transfer of sentenced persons), 14 *bis* (Joint investigations), 15 (Special investigative techniques), 16 (Transfer of proceedings) and 17 (Establishment of criminal record) of the draft Convention are loosely related to articles 10 (Extradition) and 14 (Mutual legal assistance). For this reason and in view of the recommendation of the informal consultations held on 7 December 1999 regarding articles 10 and 14 of the draft Convention, they should presumably also be applicable to all three draft Protocols.

5. A provision corresponding to article 13 of the draft Protocol against Trafficking in Persons, on “Cooperation with non-States Parties”, is not to be found in the draft Convention or either of the two other draft Protocols. Consideration might be given to whether a general formulation of the substance of this provision should be invited into the draft Convention and to whether it should be incorporated by reference (*mutatis mutandis*) into all three draft Protocols.

6. Article XV *bis* (Establishment of a focal point) of the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, supplementary to the United Nations Convention against Transnational Organized Crime, is loosely related to article 23 *bis* of the draft Convention, on the role of the Secretariat. Consideration might be given to the extent to which a special provision is needed in the draft Protocol on Firearms (or indeed whether comparable special provisions are needed in the other two draft Protocols).

7. Article XVII of the Protocol on Firearms, on “Confidentiality”, is broadly comparable to article 14, paragraph 2 *ter*, of the draft Convention. Again, consideration might be given to the extent to which a special provision is needed in the draft Protocol on Firearms (or indeed whether comparable special provisions are needed in the other two draft Protocols).

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\* Based on the text of the revised draft Convention contained in document A/AC.254/4/Rev.5.