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Draft report

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Addendum

Article 9 of the revised draft United Nations Convention against Transnational Organized Crime

Article 9 *Jurisdiction*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 3, 4, 4 *ter* and 17 *bis* of this Convention when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time that the offence is committed.¹

2. Subject to article 2, paragraphs 3 and 4, of this Convention, a State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State;²

¹ At the ninth session of the Ad Hoc Committee, the delegations of the United Kingdom of Great Britain and Northern Ireland and the United States of America supported the proposal on this paragraph set forth in document A/AC.254/5/Add.23. However, a majority of delegations supported the current text. The United Kingdom and the United States agreed to consider further how they might address their concerns in the light of the debate.

² The *travaux préparatoires* should reflect the understanding that States should take into consideration the need to extend possible protection that might stem from the establishment of jurisdiction to stateless persons who might be habitual or permanent residents in their countries.

(b) The offence is committed by a national of that State; or

(c) The offence is:

(i) One of those established in article 3, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in article 4, paragraph 1 (d), of this Convention and is committed outside its territory with a view to the commission of an offence established in article 4, paragraph 1 (a), (b) or (c), of this Convention within its territory.

3. For the purposes of article 10, paragraph 11 (a), of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person [solely]³ on the ground that he or she is one of its nationals [or that a type of punishment that does not exist in the territory of the requested Party may be imposed on that person in the territory of the requesting Party].^{4, 5}

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If the State exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, the competent authorities of those States shall, as appropriate, consult one another with a view to coordinating their actions.⁶

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

[Paragraph 7 was deleted.]⁷

³ This proposal was submitted by the delegation of Denmark. Its retention depends on the resolution of the question of the text in brackets at the end of the paragraph. The delegation of Denmark also stated that it needed to study this paragraph further to ensure its compatibility with basic principles of its system.

⁴ The text in brackets appeared previously as paragraph 3 (b) (see A/AC.254/4/Rev.8). At the ninth session of the Ad Hoc Committee, its retention was advocated by the delegation of Japan, supported in that position by the delegations of Bangladesh and Singapore. The delegation of Italy was of the view that there was merit in the substance of the text in brackets and that some way should be found to include that substance in this article, perhaps in a less mandatory formulation. The delegation of Japan indicated its willingness to consider a less mandatory formulation provided that the concept was reflected in article 10. This condition was opposed by most delegations.

⁵ The delegation of Ecuador reserved its position on this paragraph until it had the opportunity to study it in detail.

⁶ The *travaux préparatoires* should indicate that an example of how useful coordination between States Parties would be was the need to ensure that time-sensitive evidence was not lost.

⁷ At the informal consultations held during the eighth session of the Ad Hoc Committee, it was agreed to delete paragraph 7 on the understanding that the matter addressed by that paragraph would be covered by article 24 of the Convention.