

United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Vienna, 25 November-20 December 1988

OFFICIAL RECORDS

Volume I:

Preparatory work

Conference documents on organizational matters

Main Conference documents

Final Act and resolutions

**United Nations Convention against Illicit Traffic
in Narcotic Drugs and Psychotropic Substances**



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UNITED NATIONS
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NOTE

The *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* comprise two volumes.

Volume I (E/CONF.82/16) contains, in addition to the list of delegations and other organizational and preparatory documents, the basic proposal, the Conference documents and reports, the Final Act, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the resolutions.

Volume II (E/CONF.82/16/Add.1) contains the summary records of the plenary meetings and of the meetings of the Committees of the Whole—Committee I and Committee II. It includes the corrections requested by delegations for the plenary meetings and such editorial changes as were considered necessary.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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EXPLANATORY NOTES

The following acronyms, abbreviations and short forms are used in this publication:

EEC	European Economic Community
EEZ	exclusive economic zone
ICAO	International Civil Aviation Organization
1961 Convention	Single Convention on Narcotics Drugs, 1961
1971 Convention	Convention on Psychotropic Substances, 1971
1972 Protocol	1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961
Interregional HONLEA	Interregional Meeting of Heads of National Drug Law Enforcement Agencies

Countries are referred to by the names that were in official use at the time.

Preparatory work

DOCUMENT E/CN.7/1987/2

Preparation of a draft convention against the illicit traffic in narcotic drugs and psychotropic substances: report of the Secretary-General

[Original: English]
[13 June 1986]

I. INTRODUCTION

1. In paragraph 2 of its resolution 39/141 of 14 December 1984 entitled "Draft Convention against Traffic in Narcotic Drugs and Psychotropic Substances and Related Activities", the General Assembly requested:

"The Economic and Social Council, taking into consideration Article 62, paragraph 3, and Article 66, paragraph 1, of the Charter of the United Nations and Council resolution 9 (I) of 16 February 1946, to request the Commission on Narcotic Drugs to initiate at its thirty-first session, to be held in February 1985, as a matter of priority, the preparation of a draft convention against illicit traffic in narcotic drugs which considers the various aspects of the problem as a whole and, in particular, those not envisaged in existing international instruments."

The Economic and Social Council formally requested the Commission on Narcotic Drugs to initiate the preparation of the draft convention by its decision 1985/104 of 8 February 1985.

2. At its thirty-first session (11-20 February 1985), the Commission responded to the request of the General Assembly and adopted resolution 1 (XXXI) of 20 February 1985 entitled "Initiation of the preparation of a draft convention on illicit traffic in narcotic drugs and psychotropic substances".

3. In paragraph 1 of that resolution, the Commission requested the Secretary-General:

"To seek from Member States of the United Nations and States Parties to the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, by 1 July 1985, comments and proposals on the elements they would like to have incorporated in a draft convention in fulfilment of the mandate established in General Assembly resolution 39/141."

For this purpose, the Secretary-General was also requested to circulate 18 relevant documents specified in the same operative paragraph of the Commission resolution. This was done under cover of a note dated 15 March 1985.

4. In paragraph 2 of its resolution 1 (XXXI), the Commission requested the Secretary-General:

"To compile and consolidate, within available resources, the comments received from Governments, as well as other relevant studies, and to prepare a report, to be circulated to Member States of the United Nations and other States not later than 1 November 1985, which will identify elements to be considered for inclusion in a draft convention, in compliance with the mandate set out in General Assembly resolution 39/141."

5. At its ninth special session (10-14 February 1986), the Commission on Narcotic Drugs had before it the report of the Secretary-General entitled "Comments and proposals received from Governments concerning a draft convention on illicit traffic in narcotic drugs and psychotropic substances" (E/CN.7/1986/2 and Corr.1 and 2 and Add.1-3). The report of the Secretary-General, which contained a systematic analysis of the replies from 46 Governments and of other relevant material, identified the elements which many Governments considered worthy of inclusion in the draft convention, as well as other elements which seemed to require further consideration before reaching a decision as to their inclusion.

6. Following the discussion of the item¹ in the light of the report of the Secretary-General, the Commission adopted on 14 February 1986 resolution 1 (S-IX), entitled "Guidance on the drafting of an international convention to combat drug trafficking". In paragraph 3 of that resolution the Commission recommended 14 elements for inclusion in an initial draft convention. Those elements are as follows:

"(a) Definitions, as required for the purpose of the convention;

"(b) Identification, tracing, freezing and forfeiture of proceeds of drug trafficking;

"(c) Strengthening of the obligations concerning extradition for offences relating to drug trafficking;

"(d) Measures to monitor or control specific chemicals, solvents and precursors used in the illegal processing or manufacture of controlled drugs;

¹See *Official Records of the Economic and Social Council, 1986, Supplement No. 3 (E/1986/23)*, paras. 5-32.

"(e) Measures to ensure that commercial carriers are not used to transport illicit narcotic drugs and psychotropic substances, including the development of a system of sanctions;

"(f) Means of cooperation among countries, particularly among law enforcement agencies, for the exchange of information as well as the establishment of joint communications links, training assistance and the exchange of expertise, including the posting of drug liaison officers as needed, taking into consideration the special problems of transit States;

"(g) Strengthening cooperation among countries to provide mutual legal and judicial assistance in cases relating to drug trafficking, and promotion of mutual assistance in investigative and prosecutorial matters;

"(h) Controlled delivery;

"(i) Adequacy of sanctions for offences relating to drug trafficking;

"(j) Strengthening mutual cooperation among States in the suppression of illicit drug trafficking on the high seas;

"(k) Measures to curtail the illicit and uncontrolled cultivation of narcotic plants, including prevention, crop substitution and eradication;

"(l) Extension of controls in free trade zones and free ports;

"(m) Prevention of receipt, possession and transfer of equipment for the purpose of illegal manufacturing, compounding or processing of narcotic drugs and psychotropic substances;

"(n) Prevention of the use of the mails for the illegal transport of narcotic drugs and psychotropic substances."

7. In paragraph 4 of resolution 1 (S-IX) the Commission requested the Secretary-General "to prepare a preliminary draft of a convention containing the elements specified in paragraph 3, and to circulate that draft to members of the Commission and other interested Governments by 15 August 1986". The preliminary draft by the Secretary-General, reflecting the 14 elements identified by the Commission for inclusion in the draft convention, is contained in chapter II of the present document.

8. Paragraph 5 of resolution 1 (S-IX) invites "members of the Commission and other interested Governments to submit their comments on and/or proposed textual changes in the draft to the Secretary-General by 30 October 1986". In the note by which he circulated the present document to Member States of the United Nations and non-member States, the Secretary-General requested that comments on and/or proposed textual changes in the draft should reach him by the date indicated in the Commission resolution.

9. In paragraph 6 of resolution 1 (S-IX), the Secretary-General was requested "to compile these comments and/or proposed textual changes and to circulate them for consideration at the thirty-second session of the Commission, so that the Commission may give direction on the further development of the draft convention". Following receipt of replies from Governments the Secretary-General

will compile the comments and proposed textual changes received from Governments and circulate them in an addendum to the present document for consideration by the Commission at its thirty-second session.

10. The draft presented in chapter II consists of 14 articles corresponding to the elements recommended for inclusion by the Commission and elaborating their substantive contents. The sequence of articles has been determined by conceptual considerations aimed at ensuring an orderly arrangement of legally related provisions but it is understood that other sequential arrangements are possible. The correlation between the respective articles and the elements identified by the Commission is indicated under each article.

11. At this preliminary stage, and pending appropriate guidance from the Commission, it was considered premature to attempt drafting preambular provisions and articles dealing with implementation measures and mechanisms. Suggestions and concrete proposals which Governments may wish to include in their comments on the present draft will be duly reflected in the addendum to this report and taken into account at the next stage of drafting as directed by the Commission at its thirty-second session.

12. As regards the final clauses of the draft Convention, they will be prepared in due course on the basis of standard relevant provisions which exist in recently adopted United Nations instruments and in accordance with the specific directions which the Commission may give for this particular draft Convention.

II. DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Article 1*

USE OF TERMS

Except where otherwise expressly indicated, or where the context otherwise requires, the following terms in this Convention have the meanings given below:

(a) "Board" means the International Narcotics Control Board;

(b) "Commercial carrier" means a public or private entity engaged in transporting persons or goods for hire;

(c) "Commission" means the Commission on Narcotic Drugs of the Council;

(d) "Controlled delivery" means the passage through the territory of one or more Parties, with the knowledge and under the surveillance of their law enforcement agencies, of illicit consignments of controlled substances, for the purpose of monitoring their movement and identifying and bringing to justice the individuals, corporations or other legal entities involved in their shipment, transportation, delivery, concealment or receipt;

*Refers to element (a).

(e) "Controlled substances" means any of the drugs in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, all parts of the cannabis plant not included in Schedule I of those Conventions, any of the substances in Schedules I, II, III and IV of the 1971 Convention on Psychotropic Substances, and the specific chemicals in List A and List B of this Convention;

(f) "Council" means the Economic and Social Council of the United Nations;

(g) "Forfeiture" means the deprivation of proceeds by court order;

(h) "Freezing" means prohibiting the transfer, conversion, disposition or movement of proceeds by order of a court or other appropriate authority;

(i) "Illicit traffic" means the cultivation, production, manufacture, extraction, preparation, offering, offering for sale, distribution, possession with the intent to distribute, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch through the mails, dispatch in transit, transport, importation and exportation of any controlled substance contrary to the provisions of this Convention. The organization, management, financing or facilitating of the aforementioned operations or activities are also considered as illicit traffic for the purposes of this Convention;

(j) "Laundering" means the concealment or disguise of the true nature, source, disposition, movement or ownership of proceeds and includes the movement or conversion of proceeds by electronic transmission;

(k) "Legitimate third party" means any person, corporation or other legal entity who, acting bona fide and without knowledge of incriminating circumstances, has lawfully acquired the right to own, use, control or possess proceeds;

(l) "List A" and "List B" mean the correspondingly designated lists of specific chemicals annexed to this Convention, as amended from time to time in accordance with article 8 of this Convention;

(m) "Party" means a State that has consented to be bound by this Convention and for which this Convention is in force;

(n) "Proceeds" means property of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such property;

(o) "Secretary-General" means the Secretary-General of the United Nations;

(p) "Seizure" means assuming custody or control of proceeds as directed by order of a court or other appropriate authority;

(q) "Specific chemical" means a substance in List A or List B of this Convention used in the illicit processing or manufacture of narcotic drugs or psychotropic substances;

(r) "Tracing" means determining the true nature, source, disposition, movement or ownership of proceeds;

(s) "Transit State" means a State which, while not being a major producer, manufacturer or consumer of narcotic drugs or psychotropic substances, is nevertheless adversely affected by the illicit traffic in transit through its territory.

Article 2*

PENAL PROVISIONS—ADEQUACY OF SANCTIONS

1. Subject to its constitutional limitations, legal system and domestic law, each Party shall adopt such measures as may be necessary to establish as serious offences under its criminal law:

(a) Illicit traffic;

(b) Manufacture, distribution or possession of materials or equipment intended for use in the illicit production or manufacture of narcotic drugs or psychotropic substances;

(c) Acquisition, possession, transfer or laundering of proceeds derived from or used in the illicit traffic;

(d) Intentional participation in, conspiracy to commit, attempts to commit, and aiding, abetting and counselling the commission of any offences under subparagraphs (a), (b) and (c).

2. Offences enumerated in paragraph 1 of this article shall be made liable to adequate punishment, including in particular:

(a) Imprisonment or other forms of deprivation of liberty for a substantial period of time;

(b) Pecuniary penalties or fines commensurate to the nature and gravity of the offence;

(c) Forfeiture of all goods or property involved in the perpetration of the offence;

(d) Forfeiture of proceeds as provided in article 3 of this Convention.

3. The Parties shall take into consideration, where possible, as constituting aggravating circumstances for offences enumerated in paragraph 1 of this article:

(a) The involvement of organized criminal groups;

(b) The use of firearms or violence;

(c) The fact that the offender holds a public office;

(d) The victimization of minors.

4. Each of the offences enumerated in paragraph 1 of this article, if committed in different countries, shall be considered a distinct offence.

5. Foreign convictions for the offences enumerated in paragraph 1 of this article shall be taken into account for the purpose of establishing recidivism.

6. Offences enumerated in paragraph 1 of this article committed either by nationals or by non-nationals shall be prosecuted either by the Party in whose territory the

*Refers to element (i).

offence was committed or by the Party in whose territory the offender is found.

7. The Parties shall bear in mind the serious nature of offences enumerated in paragraph 1 of this article when considering the eventuality of early release or parole of persons convicted of such offences, and shall endeavour to establish adequate provisions governing the statute of limitations applicable to offences related to the illicit traffic so as to deter potential criminals from engaging in this type of criminal activity.

8. The Parties shall take appropriate measures, consistent with their legal systems, to ensure that a person charged with an offence specified in paragraph 1 of this article, or whose extradition is sought under article 4 of this Convention, is present at the necessary proceedings. In this regard the Parties shall bear in mind the large sums of money available to traffickers when setting bail.

Article 3*

IDENTIFICATION, TRACING, FREEZING, SEIZURE AND FORFEITURE OF THE PROCEEDS OF ILLICIT TRAFFIC

1. The Parties undertake to prevent and repress the acquisition, possession, transfer or laundering of the proceeds derived from or used in the illicit traffic. To that end, they shall:

- (a) Adopt national legislative and administrative measures to facilitate the identification, tracing, freezing, seizure and forfeiture of proceeds;
- (b) Facilitate effective coordinated action at the national level;
- (c) Provide each other with appropriate assistance.

2. Subject to its constitutional limitations, each Party shall treat as a punishable offence the acquisition, possession, transfer or laundering of proceeds with the knowledge that such proceeds were obtained or derived directly or indirectly from the illicit traffic, irrespective of where such traffic occurred.

3. Having due regard to its constitutional, legal and administrative systems, each Party shall:

(a) Authorize a court of criminal or civil jurisdiction or other appropriate authority, upon application on its own behalf or on behalf of another Party, to issue an order to freeze and seize proceeds if the court or appropriate authority is satisfied that a punishable offence referred to in paragraph 2 of this article has been committed in any jurisdiction, and when the proceeds are within its own jurisdiction. Freezing or seizing orders:

- (i) Shall prohibit the transfer, conversion, disposition or movement of the proceeds;
- (ii) May be made prior to the institution of formal charges but subject to a reasonable time limit;

- (iii) May be modified where circumstances so require upon motion brought by any person having an interest in the proceeds;
- (iv) May provide for the appointment of an administrator or trustee authorized to sell, control or manage the proceeds;
- (v) May be issued notwithstanding that the proceeds may be intermingled with other property or assets acquired from other legitimate sources;

(b) Authorize a court of criminal or civil jurisdiction to order the forfeiture of proceeds whether or not such proceeds are already the subject of a freezing or seizing order:

- (i) When a person has been convicted in any jurisdiction of an offence referred to in paragraph 2 of this article and the court finds the proceeds in question to be the direct or indirect result of illicit traffic;
- (ii) Notwithstanding the absence of any prosecution or conviction, when the court, upon application on behalf of the Party or on behalf of another Party, is satisfied that the owner had knowledge that the proceeds were derived directly or indirectly from the illicit traffic in any jurisdiction or used for such traffic in any jurisdiction;

(c) Ensure that in any criminal or civil proceeding concerning offences referred to in paragraph 2 of this article, or for a freezing or seizing order referred to in paragraph 3(a) of this article, or for an order of forfeiture referred to in paragraph 3(b) of this article, the court, in seeking to establish that the proceeds were knowingly derived directly or indirectly from the illicit traffic, shall take into consideration evidence establishing:

- (i) That a person, association of persons, corporation or other legal entity was connected with an offence referred to in paragraph 2 of this article;
- (ii) That at or about the same time, the person, association of persons, corporation or other legal entity acquired any proceeds;
- (iii) That in relation to the value of the proceeds the person, association of persons, corporation or other legal entity had no apparent legitimate source of income to justify their acquisition;

(d) Ensure that any criminal or civil proceedings concerning offences referred to in paragraph 2 of this article, or for a freezing or seizing order referred to in paragraph 3(a) of this article, or for an order of forfeiture referred to in paragraph 3(b) of this article, will not be adversely affected by the fact that proceeds derived from or used in the illicit traffic are intermingled with property or assets acquired from legitimate sources. Forfeiture may be related to only that portion of the proceeds derived from or used in the illicit traffic.

4. The provisions of this article shall not be construed as prejudicing the rights or interests of legitimate third parties.

*Refers to element (b).

*Article 4**

EXTRADITION

1. This article shall apply to the offences enumerated in paragraph 1 of article 2 of this Convention.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies.

4. Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves, subject to the conditions provided for by the law of the requested Party.

5. A request for extradition with respect to any of the offences to which this article applies shall not be refused:

(a) On the ground that the person sought is a national of the requested Party, unless such refusal is required by the constitution of the requested Party;

(b) On the ground that the offence was committed outside the territory of the requesting Party if the offence was intended to have or had effects within the territory of the requesting Party;

(c) On the ground that the offence was political in character or was politically motivated.

6. If extradition is refused, the requested Party shall have jurisdiction over the offence and shall without undue delay try the person whose extradition was refused in the same manner as in the case of an offence committed in its territory.

7. The Party in whose territory the offender is found shall also have jurisdiction over the offences committed outside its territory, if the Party in whose territory the offence was committed does not request extradition, provided that the offence is, in principle, extraditable and that the latter Party has full knowledge of the whereabouts of the offender, or if extradition was, without effect, offered to that Party.

8. The Parties agree that the existence of evidence providing reasonable grounds to believe that the person whose extradition is sought committed any of the offences to which this article applies shall be considered sufficient to support a request for extradition.

9. In cases of concurrent jurisdiction of the requesting and requested Parties over an offence to which this article

applies, extradition shall not be refused if the requesting Party is in a better position to establish relevant facts and bring the offender to justice.

10. The Parties shall consider entering into bilateral and regional agreements to carry out or to enhance the effectiveness of extradition as a means of bringing to justice persons accused of offences to which this article applies.

*Article 5**

MUTUAL LEGAL ASSISTANCE

1. Having due regard to their constitutional, legal and administrative systems, the Parties shall afford one another, upon request and in accordance with the provisions of this article, the widest measure of mutual legal assistance in all investigations, prosecutions and other judicial proceedings relating to offences enumerated in paragraph 1 of article 2 of this Convention which fall within the jurisdiction of the requesting Party.

2. The Parties undertake to adopt legislative and administrative measures as may be necessary within their domestic legal systems to ensure that effective assistance as envisaged in this article may be rendered to other Parties at their request.

3. Mutual legal assistance shall include, but not necessarily be limited to:

(a) Taking evidence;

(b) Effecting service of judicial documents and records;

(c) Executing requests for searches and seizures;

(d) Examining objects and sites;

(e) Locating or identifying witnesses, suspects or other persons;

(f) Exchanging information and objects;

(g) Providing relevant documents and records, including bank, financial, corporate and business records.

4. The Parties shall give favourable consideration to the possibility of:

(a) Transferring to one another proceedings for criminal prosecution in cases where such transfer may help to ensure that all persons who commit offences punishable under this Convention are brought to justice;

(b) Transferring persons in custody whose evidence is material to a prosecution or other judicial proceeding for testimonial purposes.

5. Each Party shall designate an appropriate authority to facilitate or execute requests for mutual legal assistance. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties.

*Refers to element (c).

*Refers to element (g).

6. The designated authorities shall communicate directly with each other for the execution of requests made under the provisions of this article. The designated authority shall, when necessary, appoint an agency to execute such requests.

7. Requests for mutual legal assistance shall be made in writing by the authority or by the agency of the requesting Party to the authority of the requested Party.

8. Requests for mutual legal assistance shall contain such information as the requested Party may require, including:

- (a) The title of the authority making the request;
- (b) The object of, and the reason for, the request;
- (c) An outline of any procedural requirements essential to the requesting Party;
- (d) Requirements for confidentiality, where necessary.

9. A request shall be executed in accordance with the law of the requested Party and, to the extent not precluded by the law of the requested Party, in accordance with the procedural requirements specified in the request.

10. The requesting Party shall not disclose or use information or evidence furnished by the requested Party for purposes other than those stated in the request without the prior consent of the requested Party. The requesting Party may require that the requested Party keep confidential the substance of the request except to the extent necessary to execute the request.

11. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article; or
- (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security or other essential interests.

12. Mutual legal assistance may be postponed on the ground that it interferes with an ongoing investigation or prosecution. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can be given subject to such terms and conditions as the requested Party deems necessary.

13. The Parties shall carry out their obligations under the provisions of this article in conformity with any treaties of mutual legal assistance that may exist between them and consider, as may be necessary, the possibility of concluding bilateral or regional agreements that would serve the purposes, and give practical effect to the provisions of, this article.

Article 6*

LAW ENFORCEMENT COOPERATION AND TRAINING

1. Having due regard to their constitutional, legal and administrative systems, the Parties shall cooperate closely

with each other with a view to enhancing the effectiveness of law enforcement action to suppress the illicit traffic. They shall, in particular:

(a) Establish and maintain channels of communication between law enforcement agencies, including customs services, to facilitate the secure and rapid exchange of information concerning, *inter alia*:

- (i) The identity, whereabouts and activities of known or suspected traffickers;
- (ii) The methods employed by traffickers;
- (iii) The movement of proceeds that may be derived from or used in the illicit traffic;
- (iv) The ownership and the utilization of means of transport suspected of being used in the illicit traffic;

(b) Assist each other in conducting inquiries or obtaining evidence with respect to investigations concerning cases of illicit traffic. The transfer, in an expeditious manner, of samples of controlled substances for evidentiary or analytical purposes, shall be considered in appropriate cases.

2. The Parties shall, to the extent necessary, initiate, develop or improve training programmes for their law enforcement, customs and other personnel charged with the suppression of the illicit traffic. Such programmes shall deal, in particular, with the following:

- (a) Methods used in the detection of the illicit traffic;
- (b) New routes and techniques used by traffickers, particularly in transit States, and appropriate counter-measures;
- (c) Monitoring of the import and export of controlled substances;
- (d) Detection and monitoring of the flow of proceeds derived from or used in the illicit traffic;
- (e) Methods used in laundering such proceeds;
- (f) Collection of evidence.

3. The Parties shall assist each other to plan and implement training programmes designed to share expertise, in particular, on:

- (a) The methodology of illicit traffic;
- (b) Methods used in laundering proceeds derived from or used in the illicit traffic;
- (c) Law enforcement techniques such as controlled delivery, search techniques, forensic accounting, electronic surveillance and chemical analysis.

4. The Parties shall facilitate effective coordination between their respective law enforcement agencies and, in that context, shall consider allowing the posting of liaison officers from other Parties within their borders and promoting the exchange of personnel and other experts on the illicit traffic.

5. The Parties shall endeavour, directly or through competent international organizations, to establish programmes of technical cooperation for the benefit of all Parties, with due regard to the special needs of those

*Refers to element (f).

which are transit States, to improve channels of communication and to provide technical aids when requested.

6. The Parties shall consider entering into bilateral and regional agreements to promote cooperation aimed at the suppression of the illicit traffic.

7. The Parties shall envisage the organization of regular regional and international conferences and seminars for law enforcement, customs and other personnel designed to stimulate cooperation, allow discussion on problems of mutual concern, including the special problems of transit States, and exchange information on new trends in the illicit traffic and methods used to suppress it.

Article 7*

CONTROLLED DELIVERY

1. Having due regard to their constitutional, legal and administrative systems, the Parties shall take the necessary measures to allow for the appropriate use of controlled delivery in order to identify and bring to justice the individuals, corporations or other legal entities involved in the shipment, transportation, delivery, concealment or receipt of illicit consignments of controlled substances.

2. With a view to ensuring that the use of controlled delivery may be effectively coordinated at the national and international levels, the Parties shall consider designating an appropriate authority for such coordination. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties.

3. Decisions to use controlled delivery shall be made on a case-by-case basis.

4. In order to ensure that appropriate security is maintained throughout the controlled delivery, the Parties shall provide:

(a) That the consignment be under continuous surveillance;

(b) That the Party in whose territory any immediate risk of loss arises intervenes as necessary;

(c) That any action by law enforcement agencies of the requesting Party be subject to the prior authorization of the Party having jurisdiction over the territory in which the controlled delivery takes place;

(d) That all or part of the controlled substances in the illicit consignment be replaced whenever possible with innocuous substances.

5. The Parties agree that the appropriate authorities of the country of origin and any transit country shall suspend the prosecution of offences arising from the illicit consignment committed within their jurisdiction, provided that the country of destination undertakes to initiate prosecution for offences committed within its jurisdiction within

a reasonable period of time upon completion of the controlled delivery. The country of destination shall provide such evidence as is available and is necessary for prosecution in the country of origin, or in any transit country, for offences committed within the jurisdiction of such countries.

Article 8*

MEASURES TO MONITOR OR CONTROL SPECIFIC CHEMICALS USED IN THE ILLICIT PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take all necessary measures within their respective territories to prevent the diversion of specific chemicals used in the illicit processing or manufacture of narcotic drugs or psychotropic substances and shall cooperate with each other in conformity with the provisions of this article.

2. Where a Party has information which, in its opinion, may require the inclusion of a substance in List A or List B as a specific chemical used in the illicit processing or manufacture of narcotic drugs or psychotropic substances, it shall notify the Secretary-General and furnish him with the information in support of that notification.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties and to the Commission. The Parties shall communicate their comments concerning the notification to the Secretary-General and all supplementary information which may assist the Commission in taking a decision.

4. The Commission, taking into account the comments submitted by Parties and bearing in mind all the factors it may consider relevant, may decide by a vote of two-thirds majority of its members to include a substance in List A or List B.

5. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to all non-member States which are Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication.

6. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days after the date of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based;

(b) The Secretary-General shall transmit copies of the request for review and all the relevant information to the Commission and to all the Parties, inviting them to submit comments within 90 days. All comments received shall be submitted to the Council for consideration;

*Refers to element (h).

*Refers to element (d).

(c) The Council may confirm, alter or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all Member States of the United Nations, to non-member States which are Parties to this Convention, to the Commission and to the Board.

7. The procedure described in paragraphs 2-6 of this article shall also apply, *mutatis mutandis*, when a Party has information supporting the deletion of a specific chemical from List A or List B.

8. The Parties shall consider taking measures, consistent with their domestic laws, to license or otherwise control domestic manufacture and use of specific chemicals, including prohibiting such manufacture or use where there is no licit need for it.

9. With respect to specific chemicals in List A, each Party shall:

- (a) Limit import and export to licit needs;
- (b) Require that import and export be licensed by appropriate authorities;
- (c) Inform in advance other Parties to whom exports are destined of the nature, quantities and consignees of such exports;
- (d) Require that records of imports and exports be maintained by importers and exporters for at least five years and be available for inspection by appropriate authorities;
- (e) Require correct labelling of shipments;
- (f) Encourage producers, importers, exporters and end-users to inform authorities of suspicious imports or exports;
- (g) Notify the Party of destination of a shipment when there are grounds to suspect that the shipment will be used for illicit processing or manufacture of narcotic drugs or psychotropic substances;
- (h) Seize illicit imports and exports.

10. With respect to specific chemicals in List B, each Party shall:

- (a) Require that imports and exports be properly labelled and documented. Documentation shall include the non-proprietary name of the specific chemicals being imported or exported, the quantity being imported or exported, the name and address of the importer, exporter and ultimate consignee, and the period during which the import or export is to take place;
- (b) Require that records of imports and exports referred to under subparagraph (a) be maintained at least five years and be made available for inspection by appropriate authorities;
- (c) Encourage producers, importers, exporters and end-users to inform authorities of suspicious imports or exports;
- (d) Monitor trade in order to identify suspicious transactions;
- (e) Notify the Party of destination of a shipment when there are grounds to suspect that the shipment will be used

for the illicit processing or manufacture of narcotic drugs or psychotropic substances;

(f) Seize any such specific chemicals if there is sufficient evidence that they are intended for illicit use.

11. The Parties shall notify the Board of all detected cases of actual or intended illicit manufacture of narcotic drugs or psychotropic substances, including information on the types and quantities of specific chemicals seized or used, their origin, if known, and the manufacturing process involved.

Article 9*

MATERIALS AND EQUIPMENT

1. The Parties shall cooperate to suppress trade in materials and equipment intended for use in the manufacture of narcotic drugs and psychotropic substances.

2. The Parties shall require that the intention to export a tableting or encapsulating machine be reported in advance to an appropriate authority. If such a machine is to be exported to another Party, the authority of the Party of origin shall notify the Party of destination of the particulars of the transaction.

3. The Parties shall consider requiring:

- (a) The registration with the appropriate authority of tableting and encapsulating machines;
- (b) The notification to said authority of the domestic sale or other disposition of such machines.

Article 10**

MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILLEGITIMATELY

1. The Parties shall take effective action to eradicate any opium poppy, coca bush and cannabis plants that may be cultivated illicitly in their territories.

2. The Parties shall cooperate to increase the effectiveness of eradication efforts, taking into account the various types and extent of resources available to them. Parties with common frontiers shall seek to cooperate in eradication programmes in areas along those frontiers.

Article 11***

COMMERCIAL CARRIERS

1. The Parties shall undertake to increase security at international ports and to ensure by appropriate measures that means of transport operated by commercial carriers are not used in the illicit traffic. Such measures shall

*Refers to element (m).

**Refers to element (k).

***Refers to element (e).

include thorough searches of all means of transport suspected of containing evidence of illicit traffic.

2. The Parties shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for illicit traffic and shall impose adequate penalties for failure to do so. Penalties shall include the possible forfeiture of the means of transport if it is established that the commercial carrier had knowledge that it was used for illicit traffic. Nevertheless, provided all reasonable precautions have been taken, the commercial carrier shall not be held responsible if the illicit nature of the shipment has been misrepresented by the consignor.

3. The Parties shall seek to ensure that commercial carriers:

- (a) Train their personnel to identify suspicious shipments or persons;
- (b) Limit access to means of transport and cargo at international ports;
- (c) Promote employee integrity;
- (d) Provide cargo manifests in advance of arrival in port, when possible;
- (e) Schedule, when possible, the arrival of means of transport so as to facilitate effective customs processing;
- (f) Use tamper-proof individually verifiable seals on containers.

4. The Parties agree that it shall not be considered unreasonable to delay the departure of a commercial aircraft in order to undertake a thorough search for evidence of illicit traffic. Searches shall be conducted with the assistance of qualified maintenance personnel when necessary in order to maintain air worthiness.

5. Nothing in this article shall be construed so as to preclude a commercial carrier from concluding special arrangements with a customs or law enforcement agency to prevent or suppress the illicit traffic.

*Article 12**

ILLICIT TRAFFIC BY SEA

1. The Parties shall cooperate to the fullest extent possible to suppress the illicit traffic in controlled substances by sea.

2. A Party which has reasonable grounds to suspect that a vessel registered under its laws is being used for the illicit traffic in controlled substances may request the assistance of other Parties in suppressing its use for that purpose. Parties so requested shall render such assistance, within the means available to them.

3. A Party which has reasonable grounds to believe that a vessel is engaged in illicit traffic and is on the high seas as defined in Part VII of the United Nations Convention on the Law of the Sea may board, search and seize such a vessel if:

- (a) The vessel is registered under its laws; or
- (b) That Party seeks and receives permission from the Party of registry; or
- (c) The vessel is not displaying a flag or markings of registry.

4. A Party shall respond in an expeditious manner to requests from another Party to determine, for the purposes of paragraph 3 of this article, whether a vessel is registered under its laws, and to requests for permission made pursuant to the provisions in that paragraph. Each Party shall designate an authority to receive and act upon such requests. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties.

5. Where evidence of illicit traffic is found, the Party having custody of the vessel shall take appropriate action with respect to the vessel and persons on board, in accordance with:

- (a) Its own judicial requirements if the vessel is registered under its laws; or
- (b) Existing bilateral treaties, where applicable, or any agreement or arrangement otherwise reached at the time of seizure with the Party of registry.

6. The right to challenge the nature or effect of the agreement or arrangement referred to in paragraph 5(b) of this article shall rest exclusively with the Party of registry.

7. The Parties shall consider entering into bilateral and regional agreements to carry out, or to enhance the effectiveness of, the provisions of this article.

*Article 13**

FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress the illicit traffic in controlled substances in free trade zones and in free ports substantially equivalent to or more stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

- (a) To monitor the movement and transshipment of goods in free trade zones and free ports, and, to that end, empower appropriate authorities to search incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles;
- (b) To establish a detection system to identify suspicious substances passing in or out of those areas;
- (c) To maintain patrols in harbour and dock areas and at airports and border control points in those areas;

*Refers to element (j).

*Refers to element (l).

(d) To provide for special training of the officials in charge of control in those areas.

Article 14*

PREVENTION OF THE USE OF THE MAILS FOR ILLICIT TRAFFIC

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and having due regard for their constitutional, legal and administrative systems, the Parties shall adopt measures to suppress

the use of the mails for illicit traffic and shall cooperate with each other to that end.

2. Measures referred to in paragraph 1 of this article shall include, but may not be limited to:

(a) A coordinated preventive and repressive action to discourage the use of the mails for illicit traffic;

(b) Introducing and maintaining investigative techniques designed to detect controlled substances in the mails;

(c) Legislative measures designed to enable the use of appropriate means to secure evidence required for judicial proceedings.

*Refers to element (n).

DOCUMENTS E/CN.7/1988/2 (PART II) AND (PART IV)

Report of the open-ended intergovernmental expert group meeting on the preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances

DOCUMENT E/CN.7/1988/2 (PART II)*

Report of the open-ended intergovernmental expert group meeting at its first and second sessions

[Original: English]
[23 October 1987]

Chapter I

BACKGROUND AND ORGANIZATION OF THE MEETING

A. Background of the meeting

1. The General Assembly, in its resolution 39/141 of 14 December 1984, requested the Commission on Narcotic Drugs, through the Economic and Social Council, to initiate the preparation of a new draft convention against illicit traffic in narcotic drugs and psychotropic substances. In furtherance of that objective, the Commission, in resolution 1 (S-IX) of 14 February 1986, identified 14 elements for inclusion in an initial draft convention and requested the Secretary-General to prepare such a draft for circulation to Governments for comment. The Commission considered the draft Convention and Governments' comments thereon at its thirty-second session in February 1987.

2. The Economic and Social Council, in its resolution 1987/27 of 27 May 1987, which had been submitted as a draft by the thirty-second session of the Commission on

Narcotic Drugs, requested the Secretary-General to prepare a working document consolidating the first draft of the convention, comments made by Governments to date on that draft and the results of the deliberations of the Commission on the draft at its thirty-second session; the working document was also to contain a draft preambular part, a section on the implementation mechanisms and draft final provisions. The Council further requested the Secretary-General to circulate that working document to States by 1 May 1987 and decided that an open-ended intergovernmental expert group should meet if necessary twice in 1987, to review the working document and, wherever possible, reach agreement on the articles of the draft Convention and prepare a revised working document.

3. The date limit proposed by the draft resolution of the Commission for the circulation of the working document (1 May 1987) was earlier than the first regular session of the Economic and Social Council, at which the draft resolution was to be considered (4-29 May 1987). In setting that date, the Commission was influenced by the need to foresee the very early transmittal of the working document when establishing a concise time-frame in which to further the preparation of the draft Convention. Accordingly, and in anticipation of the Council's approval of the draft resolution, the Division of Narcotic Drugs had prepared the working document requested.

4. In view of the time-frame and in anticipation of the request of the Economic and Social Council, the Secretary-General circulated the working document to all States under cover of note NAR/CL.5/1987 dated 29 April 1987. In the same note, the Secretary-General invited Governments to indicate whether they would participate in the open-ended intergovernmental expert group.

*Excluding the annexes and the corrigenda pertaining to them.

B. Organization of the meeting

First session

5. The first session of the open-ended intergovernmental expert group to consider the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances met at the Vienna International Centre from 29 June to 10 July 1987. The Expert Group was attended by 135 experts from the following 57 States: Afghanistan, Argentina, Australia, Austria, Benin, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Czechoslovakia, Denmark, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Guatemala, Hungary, India, Indonesia, Italy, Japan, Jordan, Kuwait, Madagascar, Malaysia, Mali, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Senegal, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Viet Nam.

6. At its 1st meeting, on 29 June 1987, the Expert Group elected by acclamation the following officers:

Chairman: Enrique Parejo Gonzalez (Colombia)

First Vice-Chairman: Gioacchino Polimeni (Italy)

Second Vice-Chairman: E. A. Babayan (Union of Soviet Socialist Republics)

Third Vice-Chairman: Maurice Randrianame (Madagascar)

Rapporteur: Hema Weerasinghe (Sri Lanka)

7. At its 1st meeting the Expert Group also approved its provisional agenda (DND/DCIT/1) and a provisional timetable (DND/DCIT/2/Rev.1). In adopting its timetable, the Expert Group decided to examine the various articles and sections of the draft Convention, time permitting, in the following sequence: articles 14, 13, 6, 10, 7, 8, 9, 11, 12, 2, 3, 4, 5 and 1, followed by the implementation articles, the preamble and the final clauses. It was understood that time constraints and the complexity of the task might not permit a complete review during the first meeting of two weeks' duration.

8. The Expert Group had before it the working document prepared by the Secretary-General (DND/DCIT/WP.1 and Corr.1 and Add.1) and considered that document during the 20 plenary meetings that it held at its first session.

9. In the course of its deliberations at its first session, the Expert Group considered and completed its discussion of articles 6, 7, 9, 10, 11, 12, 13 and 14; it began its discussion of article 2 and agreed on a redraft of article 8 as the basis for further discussion at its next session; and it had a preliminary exchange of views on the preamble, the implementation measures and the final clauses of the draft Convention. The discussions of the Group, in so far as they concern the textual changes finally approved or proposed for inclusion in the revised draft, are reflected in chapter II, on an article-by-article basis. At the last meeting of its

first session, on 10 July 1987, the Expert Group agreed upon the draft texts of those articles, as amended by consensus or with an indication of the variant formulations proposed for inclusion when no complete agreement could be reached.

10. At that meeting the Expert Group also requested the Secretariat to make the necessary arrangements, in accordance with paragraph 4 of Economic and Social Council resolution 1987/27, to convene the second session of the open-ended intergovernmental expert group, scheduled for 5-16 October 1987, to continue the review of the remaining articles and sections of the draft Convention.

Second session

11. The second session of the Expert Group convened as planned from 5 to 16 October 1987 and held a further 19 plenary meetings. The second session of the Expert Group was attended by 183 experts from the following 65 States: Argentina, Australia, Austria, Benin, Bolivia, Botswana, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guinea, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Jordan, Luxembourg, Madagascar, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Senegal, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela. Participation in the second session is also indicated in the list of participants (see annex II).

12. At the 1st meeting of its second session, on 5 October 1987, the Expert Group took note of the fact that four of the officers elected at the first session would be present at the second session. In view of the fact that the Third Vice-Chairman, Mr. Randrianame (Madagascar), would not be present at the session, it was agreed that it would be appropriate to proceed to the election of a replacement. Accordingly, at the third meeting of its second session, on 6 October 1987, the Expert Group elected by acclamation Christophe Akele (Benin) to the post of Third Vice-Chairman.

13. The Expert Group had before it a provisional agenda (DND/DCIT/4) and a provisional timetable (DND/DCIT/5/Rev.2) which reproduced the agenda items and the proposed sequence for considering the draft articles that had been before it at its first session. The Expert Group continued to base its discussions on the working document referred to in paragraph 8 above. During its second session, the Expert Group also had before it the interim report on its first session (DND/DCIT/WP.12).

14. In the course of its discussions at the second session, the Expert Group considered and completed its discussion of articles 2, 2 *bis*, 8 and 11 *bis*; it also completed its general debate on articles 3 and 4. In view of the fact that time available did not permit examination of articles 1

and 5, as well as further consideration of articles 3 and 4, the preamble, the implementation measures and the final clauses, it was the consensus of the meeting that a third session would be desirable in order to complete its work. Such a session, if authorized, could usefully be held immediately prior to the tenth special session of the Commission on Narcotic Drugs.

15. At its last meeting, on 16 October 1987, the Expert Group approved the revised text of draft articles 2, 2 *bis*, 8 and 11 *bis*, as amended by consensus or with variants indicated in square brackets when no complete agreement could be reached. It then adopted its report and instructed that the revised text of all draft articles approved at both its first and second sessions should appear as an annex to the report.

Chapter II

REVIEW OF THE DRAFT CONVENTION

Article 2

First session

16. Several representatives expressed the view that the title of article 2 did not reflect the full substantive content of the article and it was suggested that it should be amended to read as follows: "Offences, Sanctions and Jurisdiction".

17. Several representatives emphasized that the limitation clause in the introductory sentence of paragraph 1 should be deleted as such restricting language would have the undesirable effect of weakening one of the basic articles of the draft Convention and was not in conformity with the usually accepted practice in other international penal instruments; the undertaking by States to punish the illicit traffic should be mandatory. Some representatives suggested that the alternative limiting clause "consistent with the basic principles of their national legal systems" should be used in the introductory sentence, as had been decided earlier with respect to articles 7, 13 and 14, so as to provide flexibility for each State in adjusting their national legislation to the stringent provisions of this article.

18. The view was expressed that only subparagraph 1(d) should be subject to a limitation clause similar to that of article 36 of the 1961 Convention, that is, subject to constitutional limitations, its legal system and domestic law, as the various offences covered under this provision were often open to different interpretations.

19. Some representatives expressed the view that only offences committed intentionally should fall within the scope of the draft Convention and proposed the introduction of the word "intentionally" in paragraph 1.

20. Some representatives considered it preferable to examine first the provisions of subparagraphs (a)-(d) and, on the basis of their subsequent reformulation, to decide what limiting clause, if any, to adopt in the introductory sentence.

21. Different views were expressed regarding the criterion to be applied to qualify an offence as "serious". In that connection, several representatives pointed to the circumstances surrounding the offence, the scale of the traffic involved, the disturbance of social order and the threat to the health of individuals and society as possible factors to be taken into consideration. Several representatives favoured the deletion of the adjective "serious" since minor cases might constitute offences under subparagraphs 1(a)-(d). Another representative attached importance to its retention as it would serve as an invitation to Parties to provide severe sanctions commensurate with the definite gravity of the offence.

22. The Group adopted subparagraph 1(a) as worded in the initial text with the understanding that the expression "illicit traffic" was to be defined in article 1 and that the definition suggested by the informal working group in the Commission of Narcotic Drugs still had to be reviewed by the Expert Group.

23. Some representatives indicated that the activities referred to in subparagraph 1(b) should not constitute separate offences but only be punishable as complicity.

24. Several representatives expressed the view that in order for the activities indicated in subparagraph (b) to be considered as criminal, they had to be undertaken intentionally and with the knowledge of their illicit objective. It was also suggested that it was the prior knowledge of the actual use of materials and equipment for illicit production and manufacture which had to be taken into consideration for the establishment of the offence. Some representatives pointed to the difficulties of implementing the provisions of the subparagraph which dealt essentially with activities related to the preparatory stage in the illicit production or manufacture of narcotic drugs and psychotropic substances.

25. The Group agreed that the subparagraph should refer to "controlled substances" thus limiting its scope of application.

26. The Group agreed to incorporate in subparagraph 1(c) the more comprehensive provision of paragraph 2 of article 3 regarding the acquisition, possession, transfer or concealment of property, it being understood that the latter provision could then be deleted to avoid duplication. It was proposed that reference should be made as well to the utilization of property and that the mention in the original subparagraph 1(c) of the use of such property in the illicit traffic should be retained.

27. Several representatives pointed to the difficulty of defining and limiting the scope of application of subparagraph 1(c) which, as presently drafted, might be open to unreasonable extensions.

28. Several representatives proposed that a limitation clause be inserted in the opening sentence of paragraph 2 as it dealt with sanctions which were in the purview of State sovereignty. It was proposed that the provision of paragraph 2 should be made subject to the constitutional limitations, legal system and domestic law of the Parties.

29. Taking into account the seriousness of drug trafficking offences, several other representatives supported the provision of paragraph 2 as drafted; in their view the measures envisaged therein were indicative of the innovative penal measures which States had to take to deal with drug trafficking. Accordingly the introduction of a limiting clause would reduce the deterrent effect of the sanctions envisaged.

30. Several representatives expressed the view that the sanctions provided for in paragraph 2 should be sufficiently stringent to have the expected deterrent effect. Severe penalties should be provided for in criminal law commensurate with the serious offences enumerated in paragraph 1. Several representatives insisted that the penal measures envisaged in the new draft Convention should go further than those provided for in article 36 of the Convention on Narcotic Drugs, 1961, and in article 22 of the Convention on Psychotropic Substances, 1971. In this connection, several representatives strongly supported the inclusion of pecuniary sanctions and the forfeiture of property and proceeds in the paragraph under consideration.

31. Some representatives suggested that subparagraphs 2(a)-(d) should be deleted; the provision should merely state that offences enumerated in paragraph 1 should be made liable to adequate punishment without mention of the modalities of sanctions, as this might give rise to difficulties of interpretation and application under the diverse legal systems. In the absence of enumeration as in the initial text, a limitation clause might not be necessary as it would be up to the respective States under their national legal system to determine the modalities of sanctions.

32. Some other representatives supported the enumeration in subparagraphs 2(a)-(d) but proposed that the enumeration should be introduced by "any of the following" to make it clear that all sanctions listed were only examples of types of sanctions that States could adopt in their national legislation but that they were neither applicable in all cases nor exhaustive.

33. One representative proposed that capital punishment should be added as a possible sanction depending upon the nature and gravity of the offence and subject to each Party's constitutional limitations, legal system and domestic law. Several representatives strongly objected to this proposal and expressed firm moral opposition to it, emphasizing that the United Nations had taken a stand in favour of the abolition of the death penalty and had clearly indicated the reasons for that position.

34. Several representatives indicated that it was not clear from the initial draft whether the provision for the deprivation of liberty in subparagraph 2(a) and the pecuniary penalties or fines in subparagraph 2(b) were to be considered as alternative sanctions or whether the intent was to apply them simultaneously.

35. Several representatives indicated that the meaning of the expression "other forms of deprivation of liberty" should be clarified. It was suggested that another more

acceptable formulation should be found to reflect the intended reference to measures alternative to imprisonment.

36. Several representatives expressed reservation regarding the use of the terms "liable to" in reference to sanctions as this same wording had given rise to divergent interpretations in connection with article 37 of the 1961 Convention.

37. At the conclusion of its preliminary discussion on paragraph 2, the Group accepted that paragraph 2 should indicate that the offences set forth in paragraph 1 of the article should be punishable by penalties which take into account the grave nature of the offences.

38. The Group also agreed to enumerate, as possible sanctions, in paragraph 2, for further consideration, imprisonment, other forms of deprivation of liberty, and the forfeiture of goods or property.

39. The Group also decided to consider, within the same context, the proposal of one representative drafted along the lines of article 37 of the 1961 Convention, as well as a specific proposal to make the offences referred to in paragraph 1 subject to pecuniary sanctions and forfeiture.

40. One representative introduced the proposals made by his Government as they appear in paragraphs 272 and 273 of the working document to the effect that two additional subparagraphs should be added concerning, respectively, the means for the destruction of controlled substances which have been seized in the illicit traffic, and the provision of other measures, either as an alternative to conviction or punishment or in addition to conviction or punishment, where abusers of drugs had committed one of the offences referred to in paragraph 1. Another representative reserved his position with respect to the proposal to further examine the suggested amendment contained in paragraph 272 of the working document.

41. Commenting on paragraph 3, some representatives referred to the legal problems which might be experienced in countries where aggravating circumstances were taken into consideration as a matter of course by their courts but not necessarily reflected in their national legislation. It was also pointed out that while some of the aggravating circumstances listed in the paragraph were of a general nature, others had a specificity which did not make them applicable in particular countries.

42. One representative considered that the wording of the introductory sentence should be made stronger by the deletion of the words "where possible". Another representative proposed the insertion of the words "and desirable" after those words.

43. Several representatives said that the concept of recidivism should be included in the paragraph as it constituted a most important aspect of aggravating circumstances. It was suggested in this connection that the term "recidivism" should be inserted; another suggestion was to speak of "prior convictions under paragraph 1, whether foreign or domestic".

44. It was proposed to amend subparagraph (a) to read "the involvement in other international organized criminal activities". The author of the proposal later agreed to a suggestion that subparagraph (a) remain as it was, and that his proposal be included as a new subparagraph.

45. As regards subparagraph (c), it was suggested that it should apply not only to offenders holding a public office but also to those in the private sector. It was also proposed that the wording be amended as follows: "The international misuse of public authority or office".

46. Concerning subparagraph (d), it was suggested that in addition to the "victimization", the "utilization" of minors should also be mentioned, as well as the victimization and use of disabled persons or persons suffering from mental or physical handicaps. According to another suggestion the fact that the offence had been committed in the vicinity of places heavily frequented by minors or disabled persons such as schools or rehabilitation centres for the disabled should be taken into consideration.

Second session

47. The Group resumed its consideration of article 2, taking as a basis for discussion of paragraphs 1 and 2 the original draft and, in appropriate cases, the reformulation with variants arrived at during its first session.

48. Divergent opinions were expressed regarding the retention of a limitation clause in the introductory sentence of paragraph 1. Several representatives emphasized that any restricting language would have the undesirable effect of weakening one of the basic articles of the draft Convention; the undertaking by States to punish the illicit traffic should be mandatory and Parties to the Convention should be ready to adjust their national legislation to the requirements of its provisions.

49. Some other representatives argued that certain States might find it difficult under their constitutional and legal systems to apply fully and effectively some of the far-reaching provisions of the article and that some form of limitation clause was consequently necessary.

50. Some representatives expressed the view that the retention of a single limitation clause in paragraph 1 was not the best formula; the provisions of the different subparagraphs should be subject to different limitation clauses adapted to their substantive content and legal implications. This approach would take into account the particular problems that certain States could have in implementing some of the provisions.

51. Several representatives proposed that the word "serious", which appeared in paragraph 1 of the initial draft, should be deleted as minor offences could also come under the provisions of subparagraphs 1(a)-(d). It was argued in that connection that, should the word "serious" be retained, the introductory sentence would have to be subject to a limitation clause. Several representatives, on the other hand, attached importance to the retention of the concept of "serious" as, among other things, it would serve as an invitation to Parties to provide for severe sanctions commensurate with the gravity of the offence.

52. With respect to subparagraph 1(b) of the reformulated text, several representatives expressed the view that the wording of the provisions was too broad in scope and should be made more specific.

53. Regarding subparagraph 1(c) of the reformulated draft, the view was expressed that the provisions were too far-reaching and could be subject to ambiguous interpretations leading to the criminalization of bona fide persons involved at different stages of business transactions, or other persons not involved in illicit drug trafficking. They would also constitute unnecessary limitations to free trade.

54. Several representatives spoke in favour of retaining subparagraphs 1(c) and (d) because of the innovativeness of their provisions which covered, respectively, the preparatory phases related to illicit trafficking and the criminalization of those who knowingly and intentionally benefited from illicit traffic.

55. Several representatives expressed the view that the terminology used in subparagraph 1(d) of the initial draft would raise difficulties under the legal system of some countries and pointed out, in particular, that "conspiracy" was not a universally accepted legal concept. The provision of the subparagraph should accordingly be qualified by an appropriate limitation clause.

56. Following further discussion and informal consultations between interested experts, the Group adopted as a compromise a restructured paragraph 1 with its substantive provisions subdivided into subparagraphs (a) and (b). The provisions of subparagraph (a), because of their significance as the centre-piece of the draft Convention, would not be subject to any limitation clause, whereas those of subparagraph (b) would be subject to the constitutional limitations, legal system and domestic law of the Parties.

57. The Group agreed to delete the word "serious" in the introductory sentence of paragraph 1 as the serious nature of the offences was inherent in the wording which made it mandatory for each Party to establish as offences listed under its criminal law the acts listed in subparagraphs (a) and (b). The Group also agreed to insert the word "intentionally" at the end of the sentence so as to stress that in order for the activities listed in paragraph 1 to be considered as criminal, they had to be undertaken with the knowledge of their illicit objective.

58. The Group agreed to the proposal of one representative to dissociate the concepts of "manufacture and distribution" of materials or equipment from that of their "possession" so that the provision regarding "possession" would be subject to the limitation clause under subparagraph (b).

59. Concerning paragraph 2 of the reformulated draft, divergent opinions were expressed as to whether the sanctions enumerated therein were cumulative or alternative means of punishment for the offences set forth in paragraph 1. Several representatives were of the view that the sanctions mentioned in the paragraph should not be construed as being either exhaustive or cumulative, but rather

indicative of the types of sanctions which Parties may adopt. Some representatives indicated that in their countries a combination of sanctions which included imprisonment and forfeiture, were often applied as an effective deterrent against illicit drug trafficking.

60. The propriety of including forfeiture among the possible sanctions was extensively discussed. Several representatives argued that irrespective of the fact that in some legal systems forfeiture was considered a pecuniary sanction (whereas in others it constituted a penal sanction), the concept was now sufficiently established and widely used and should accordingly find its place in the convention. Furthermore, it was considered that the forfeiture of assets acquired through illicit trafficking had proven to be an effective means of depriving traffickers of the gains of, as well as of the means of undertaking anew, their criminal activities. The Group endorsed its previous tentative decision to insert both the concepts of "pecuniary sanctions" and "forfeiture" in the new paragraph 2.

61. One representative introduced the proposal made by his Government as it appears in paragraph 273 of the working document to the effect that an additional paragraph should be included concerning the provision of other measures either as an alternative to conviction or punishment, or in addition to conviction or punishment, where abusers of drugs have committed one of the offences referred to in paragraph 1. In the same context, several representatives pointed to the necessity of having a provision worded along the lines of article 36, subparagraph 1(b), of the 1961 Convention so as to safeguard the application of those provisions in that instrument as their absence in the new draft Convention might lead to the interpretation that they were no longer applicable.

62. Several representatives suggested that the proposal should not be restricted to drug abusers but should be applicable as well to other offenders in appropriate cases. One representative indicated that existing national legislation in that sense had yielded tangible results in his country.

63. Several representatives objected to these proposals on the grounds that the purpose of the new draft Convention was to criminalize illicit traffic and not to deal with all aspects of drug abuse; the inclusion of such provisions would weaken the substantive content of article 2. It was stressed that as far as major traffickers were concerned, treatment and rehabilitation could only be considered as an addition and not as an alternative to conviction or punishment. It was the common understanding of representatives that the special measures that States may wish to provide in addition to conviction or punishment, should be included in provisions distinct from those in paragraph 2 which established the obligation for States to take into account the grave nature of the offences set forth in paragraph 1 in setting applicable sanctions.

64. Following informal consultations, the Group proposed two additional, distinct subparagraphs covering respectively special measures that, irrespective of the nature and seriousness of the offence, may be applied to offenders, in addition to conviction or punishment, and special

measures applicable in appropriate cases of a minor nature as alternative to conviction or punishment, including some measures specifically applicable when the offender is a drug abuser. It was indicated that the measures mentioned were only indicative of those which States may provide.

65. Commenting on paragraph 3 of article 2 in the original draft, several representatives observed that whereas in common law countries the determination of aggravating circumstances was within the purview of the courts, in countries with civil law tradition the courts, while competent to apply extenuating circumstances, could not pronounce aggravating circumstances without legislative authority.

66. One representative suggested that the nature of the obligation placed on States Parties by paragraph 3 should be made clear by stating that the circumstances of aggravation may be treated as matters relevant to the sentence to be imposed on a person and need not be regarded as additional elements of the offences enumerated in paragraph 1.

67. As regards the qualifying words "where possible" used in the introductory sentence, several representatives proposed their deletion to make the provisions of the paragraph more binding on Parties. Some other representatives were in favour of making the paragraph less rigid by inserting as an additional clause the words "where desirable" after the words "where possible". It was suggested that a solution might consist in introducing an appropriate limitation clause at the beginning of the sentence.

68. Following informal consultations, the Group considered and approved a revised formulation of the introductory sentence which instead of referring to "aggravating circumstances" spoke of "factual circumstances which may make the commission of the offences set forth in paragraph 1 particularly serious", specifying that Parties shall ensure that their courts can take such circumstances into account.

69. There was some discussion in the Group as to whether the paragraph should contain a list of the factual circumstances that could be taken into account by the courts. One opinion was that such a list, which necessarily could be neither exhaustive nor mandatory, was not advisable. Another view was that it could serve a useful illustrative purpose provided it was kept within reasonable limits.

70. The Group agreed to include, as proposed by two experts, two additional circumstances that could be taken into account by courts. The first one, which had already been endorsed at the earlier meeting, would cover the involvement of the offender in other international organized criminal activities. The other, the purpose of which was to take into account the combination of drug offences with economic offences, would refer to the involvement of the offender in other illegal activities facilitated by the commission of the offence. As regards two factual circumstances already listed in the original draft under subparagraphs (c) and (d), the Group agreed to specify that in the

case where the offender held a public office, the offence had to be connected with that office, and to add the use of minors to the victimization of minors.

71. Several representatives proposed that paragraph 4 be deleted as its purpose was not clear and, in the view of some of them, amounted to a violation of the principle *non bis in idem*. A proposal to introduce a limitation clause in line with that of article 36, paragraph 2, of the 1961 Convention in order to make the provisions generally acceptable was not agreed upon. It was pointed out that the introduction of a limitation clause would make the paragraph inoperative. One representative, citing the experience of his Government, indicated that the corresponding provision in the 1961 Convention had proved unworkable. The Group agreed to delete the paragraph.

72. Several representatives pointed to the difficulties on both legal and practical grounds to which the application of paragraph 5 might give rise. It was noted in particular that certain legal systems did not include the concept of recidivism. The Group agreed to the proposal by several representatives to delete the paragraph and mention instead, in paragraph 3, prior convictions, whether foreign or domestic, among the factual circumstances that could be taken into account by the courts in sentencing for the offences enumerated in paragraph 1 of the article.

73. Several representatives drew attention to the substantive connection between the provisions of paragraph 6 and those of article 4, paragraphs 6 and 7 which also dealt with cases in which a Party was requested to assume jurisdiction. The Group came to the conclusion that a separate article dealing specifically with jurisdictional issues would be more appropriate and decided to work out such an article.

74. In discussing paragraph 7, the Group observed that its provisions dealt with two distinct concepts, namely early release and parole, on the one hand, and the statute of limitations, on the other. It was therefore considered more appropriate to dissociate those provisions and break them into separate paragraphs.

75. As regards early release or parole, some representatives drew attention to the difficulties they had with the provision as drafted. It was pointed out in particular that it did not seem appropriate to require that the releasing authority should defer a release because it related to an offence covered under paragraph 1. After further discussion, the Group however retained the wording as it appeared in the original draft.

76. With respect to the statute of limitations, some representatives argued in favour of the deletion of the relevant provision on the grounds that the idea of introducing a special prescription for a particular category of offences was not compatible with their respective legal systems. Some other representatives supported the inclusion of such a provision in the revised form proposed by one expert as it appeared in paragraph 253 of the working document. The Group reached agreement on the new formulation which made it clear, with the insertion of the clause "where appropriate", that Parties should endeavour to

establish adequate provisions governing the statute of limitations applicable to the offences enumerated in paragraph 1 of article 2 when existing provisions were not deemed sufficient for the effective implementation of the measures contemplated in that article.

77. Some representatives considered that the provisions of paragraph 8 were somewhat out of place in the draft Convention and that, in any case, they would fit better under article 5 dealing with judicial assistance. Several representatives expressed the view that, given the gravity of the offences specified in paragraph 1, the possibility of bail should not be considered. Some other representatives stressed that the setting of bail was a matter for the independent decision of the courts. It was therefore proposed that the second sentence of paragraph 8 be deleted. The Group agreed to the deletion of that sentence.

78. The Group considered a rewording of the first sentence of paragraph 8 proposed by one representative, as it appeared in paragraph 262 of the working document, to the effect of limiting the scope of the obligation of each Party to ensuring that a person charged with or convicted of an offence specified in paragraph 1 of article 2 is present at the necessary proceedings to instances where the person is found within its territory. The Group approved the new formulation without enumerating the proceedings in question but specifying that they were of a criminal nature.

79. Several representatives proposed the insertion of an additional paragraph in article 2 drafted along the lines of paragraph 4 of article 36 of the 1961 Convention. In support of such a paragraph, it was explained that the objective was not to introduce a limitation clause covering all the provisions of article 2, but to indicate that the procedural modalities for the execution of the obligation imposed on the Parties under paragraph 1 would be within the purview of their respective domestic law. On the other hand, some representatives held the view that the proposed new paragraph was superfluous and would introduce an element of ambiguity in the article.

80. Several representatives objected to the use of the term "defined" as it could lead to divergent interpretations in the different languages and preferred the term "described".

81. In the light of the discussion, and taking into account the various suggestions, the Group agreed on the formulation of the additional paragraph to be inserted in article 2.

82. One representative proposed the inclusion of a provision drafted along the lines of article 37 of the 1961 Convention concerning the seizure and confiscation of drugs, substances and equipment used in the illicit traffic and, referring to the proposal of his Government in paragraph 272 of the working document, further proposed a consequential paragraph concerning the destruction of narcotic drugs and psychotropic substances which have been seized in the illicit traffic. The Group agreed to take up these proposals at an appropriate stage during its consideration of other articles of the draft Convention.

Article 2 bis

83. Pursuant to its decision when it considered paragraph 6 of article 2 in the original draft, the Group was presented with a new additional draft article dealing with jurisdictional issues worked out during informal consultations.

84. It was explained that a distinction had been made in paragraph 1 of the proposed article between the cases where the establishment of jurisdiction was mandatory and those where it was optional. It was considered advisable to place paragraph 2 in square brackets since the retention of its provisions, which dealt with the assumption of jurisdiction when extradition was refused was dependent on the Group's consideration of article 4 dealing with extradition. One representative recalled in this respect his strong reservations regarding the establishment of any jurisdiction beyond what was presently contained in draft article 2 *bis*, paragraph 1. As regards paragraph 3, it was pointed out that it was in line with the standard provision to be found in other international instruments.

85. The Group approved the additional article on jurisdiction as formulated and agreed to examine the provisions of its paragraph 2 after it would have completed its consideration of article 4.

86. Two representatives expressed reservations as to subparagraph 1(b)(iii), which they considered ambiguous.

Article 3

87. The Group discussed article 3 as contained in the original draft. Specific comments were made on the various paragraphs in order to provide some guidance for the informal consultations considered desirable with a view to arriving at a generally acceptable text.

88. The Group recognized that the provisions of article 3 were a major innovative feature of the convention and should greatly contribute to countering the economic power of drug traffickers. Several representatives considered that the drafting of relevant and widely acceptable provisions on what was a complex problem in a sensitive area required a flexible approach. It was generally felt that the article as drafted went into excessive detail and should be restructured to improve its clarity. It was the view of some representatives that the article should only lay down the principles of international cooperation in this matter and leave implementation measures to each State. It was however pointed out that the search for simplification should not be at the cost of the substantive content necessary to make the article effective.

89. Several representatives considered that the practical elaboration of the provisions of the article, particularly regarding forfeiture, should be the subject of bilateral or multilateral agreements between Parties and that a provision taking this into account should be included in the draft Convention.

90. Several representatives stressed that mutual judicial assistance between States for the tracing and seizure of proceeds from drug trafficking was essential. In that

connection it was suggested that a reference to the provisions of article 5 should be inserted in the article.

91. Several representatives pointed to the necessity of reconsidering the definition of the term "property" as there were widely divergent interpretations as to its meaning in the context of the draft Convention. One representative objected to the broad meaning assigned to it in article 3 as it would also apply to intangible property such as copyrights and patent rights. Several other representatives stressed that both tangible and intangible property should be covered, particularly since one of the objectives of the article was to counter the source of financing of illicit traffic.

92. Commenting on paragraph 1, one representative pointed out that it contained far-reaching provisions which might be difficult to implement within the context of his country's legal system and suggested that they be qualified by some form of safeguard clause.

93. With regard to subparagraphs 1(a) and (b), one representative indicated that there was a degree of overlap between the two subparagraphs and proposed that subparagraphs (a) and (b) be combined in a single subparagraph in order to avoid duplication. Some other representatives proposed that these two subparagraphs be deleted entirely as it was felt that they also overlapped with the provisions of article 2.

94. Several representatives indicated that it was necessary to clarify the distinction between the form of assistance envisaged in subparagraph 1(c) and the mutual judicial assistance provided for in article 5; as the provisions in article 5 seemed adequate, subparagraph 1(c) might be superfluous.

95. Many representatives held the view that paragraph 2 should be deleted as the measures contemplated therein had already been adequately provided for in article 2. While recognizing the existence of a certain overlap, one representative indicated that there were elements in paragraph 2 which had not been included in article 2. It was suggested that these elements should be preserved and that paragraph 2 might be modified in order to eliminate duplication. With respect to the specific element relating to the knowledge that the proceeds were derived directly or indirectly from illicit traffic, irrespective of where it occurred, it was proposed that it be incorporated into article 2 or retained in a reformulated paragraph 2.

96. It was suggested that the limitation clause in paragraph 3 be brought in line with the formula used in article 2. Another suggestion was that it be deleted in the opening sentence and that the subparagraphs be reformulated in terms that could evoke a broader measure of acceptance, bearing in mind the difficulties of implementation that some countries could experience within their legal system.

97. Several representatives supported the inclusion in paragraph 3 of a provision to the effect of reversing the onus of proof so as to remove the assumption of good faith and leave it to the accused trafficker to prove that his assets and property were acquired by licit means. One

representative expressed the view that such reversal of the onus of proof should in principle remain restricted to the assessment of the value of profits made by a trafficker once he had been regularly convicted of an act of illicit traffic. Some other representatives expressed the view that a provision that would shift the burden of proof would not be acceptable under the different legal systems of potential States Parties.

98. Attention was drawn to the fact that paragraph 3(a) in the present draft dealt simultaneously with measures to be taken at the domestic and at the international levels. In order to achieve greater clarity, it was proposed to divide the text into two separate subparagraphs covering, on the one hand, measures providing for the issue of orders to freeze and seize property by a Party on its own behalf, and, on the other hand, identical measures upon the application of another Party.

99. Commenting on subparagraphs 3(a)(iv), a number of representatives objected to the provisions empowering administrators and trustees to sell property in their custody. It was pointed out that seizure being a provisional measure, the power to dispose of seized goods should be restricted to cases where perishable goods were involved, for the sake of preserving their value.

100. One representative sought clarification as to the difference between subparagraphs (i) and (ii) of article 3, paragraph 3.

101. Several representatives considered as unacceptable the provision of subparagraph 3(b)(ii) regarding the forfeiture of proceeds, where there had been no conviction or prosecution, as the right to property was a fundamental right guaranteed by their constitution and domestic law. Such a provision was also considered as contrary to the principle of the presumption of innocence.

102. Several representatives spoke in favour of deleting subparagraph 3(c) as the different categories of proceedings enumerated were confusing and superfluous. It was pointed out that the elements of evidence should be left to the assessment of courts. It was suggested that, should the subparagraph be retained, the enumeration of proceedings should be revised.

103. Several representatives stressed that in order for the provisions of the article to be effective, foreign court orders for the forfeiture of property derived from the illicit traffic should be enforceable in States Parties to the Convention.

104. A proposal was made to amend the second sentence of subparagraph 3(d) by replacing the word "may" by "shall" in order to make it clear that whenever lawful property was intermingled with illicit proceeds, the severance of that property from those proceeds should be mandatory. Several representatives objected to the proposed amendment on the grounds that the original formulation was more flexible in the sense that Parties had the option of forfeiting not only property derived from, or used in, the illicit traffic, but also property derived from other illegal activities. It was further argued, in favour of

maintaining the present wording, that Parties should have the possibility of extending the right to realize forfeiture orders to the entire property of the offender. One representative observed that it would be difficult to implement such a provision under his country's legal system where the court decided the extent of the property to be forfeited and he consequently suggested the deletion of the last sentence of subparagraph (d).

105. Commenting on paragraph 4, one representative suggested that it might be preferable to speak of "bona fide" third parties rather than of "legitimate" third parties. It was however pointed out by some other representatives that it was possible for a third party to be legitimate and yet not bona fide as in the case of legitimate acquisition of property which is later revealed to have been derived from illicit traffic. Some representatives were of the opinion that the paragraph would benefit from more precision if the words "legitimate third parties" were replaced by "parties not involved in the criminal act". It was generally agreed that the rights of innocent third parties should be protected but that a more appropriate formulation should be worked out for the paragraph.

106. A suggestion was made for the inclusion of a provision recommending that the requirements of bank secrecy should not obstruct investigations of drug trafficking offences.

107. Several representatives expressed the view that article 3 should include a provision dealing with the disposition of internationally forfeited property. The idea that property forfeited by one Party in connection with sentences passed by another Party should be shared between the Parties involved received considerable support.

108. It was suggested that proceeds of forfeiture should be channelled through appropriate international agencies, such as the United Nations Fund for Drug Abuse Control, to assist developing countries, particularly transit States, in combating illicit traffic. In this connection one representative proposed a new paragraph providing for the transfer to the Fund of the financial resources derived from property forfeited by one Party in connection with sentences passed in another Party, in accordance with agreements between interested Parties. Several representatives supported this proposition.

109. Several representatives, referring to the current practice in their countries, favoured a formula providing for the allocation of the proceeds of forfeited property to national funds for drug control programmes.

110. Several representatives expressed reservations regarding the insertion of such a provision as it fell outside the scope of a convention dealing with criminal law. It was furthermore questionable, in their opinion, whether the Group was the appropriate forum to consider matters touching upon domestic budgetary procedures.

111. Several representatives indicated that the transfer of forfeited property to an international fund, such as the Fund, would go counter to their constitution and legal system which provided that such property accrue to the

national budget. This problem was further complicated in the case of federal States where, under the constitution, the disposition of forfeited property may not fall within the sphere of competence of the central government.

112. Several representatives expressed the view that the modalities for disposing of the proceeds of forfeiture could be best elaborated through bilateral and multilateral agreements. In this connection one representative referred to paragraph 286 of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control where a similar approach was adopted by the International Conference on Drug Abuse and Illicit Trafficking.

113. In order to provide an encouragement for States to forfeit the illicit gains of traffickers, it was suggested by some representatives that proceeds from the forfeited property should accrue to the State in which they were located and where forfeiture was executed.

Article 4

114. The Group began consideration of article 4 by a general discussion during which preliminary comments were made on the various specific paragraphs.

115. The representatives who spoke on the subject supported the inclusion in the draft Convention of an article on extradition and considered it as a key element in the fight against illicit traffic. Several representatives underlined that the new instrument should complement and strengthen the related provisions of the existing drug control treaties by making extradition mandatory for all the grave offences covered by the draft Convention. Some other representatives stressed the importance of drafting the provisions of article 4 along the lines of the corresponding provisions of the 1961 Convention and the 1971 Convention so as to ensure that Parties to those Conventions would have no difficulty adhering to the new instrument. In that connection, it was proposed that the provisions of article 4 should be qualified by a limitation clause similar to those contained in article 36 of the 1961 Convention and article 22 of the 1971 Convention.

116. It was pointed out that the convention should not be regarded as purporting to establish a specific extradition treaty between States, or affecting the terms and conditions of extradition treaties between Parties. It was also said that article 4 should complement and not derogate from the provisions of article 2.

117. Several representatives proposed that paragraph 1 be amended to indicate that the provisions of article 4 should apply only to the grave offences included in article 2, paragraph 1. Mention was made of the desirability of seeking to develop common standards concerning the criteria for drug offences to be sufficiently serious to justify extradition. One representative suggested that such offences could be those that are punishable by the deprivation of liberty for a maximum term of at least two years.

118. The provisions of paragraphs 2, 3 and 4, which are similar to the corresponding provisions of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972

Protocol, were considered generally acceptable subject to some drafting improvements.

119. With respect to paragraph 2, one representative suggested that the first sentence should be reformulated to make it clear that the obligation of Parties under this provision was to supplement existing extradition treaties to cover drug-related offences.

120. Several representatives suggested that the provisions of paragraph 3 should be drafted so as to make extradition for drug-related offences mandatory between Parties which are not bound by an extradition treaty. They suggested replacing the word "may" by the word "shall".

121. Regarding paragraph 4, one representative considered that the conditional clause at the end of the paragraph was susceptible to broad interpretation and that the European Convention on Extradition adopted in 1957 might serve as a model for a better formulation.

122. The view was expressed by several representatives that paragraphs 5, 8 and 9 were too far-reaching and contradicted the principle that domestic law or existing treaties were to apply in the case of offences covered under the convention; there was no reason to include special requirements covering extradition for drug trafficking offences.

123. The opinion was expressed that the whole of paragraph 5 should be deleted. It was argued in this connection that the discretion of sovereign States to refuse extradition should be preserved. On the other hand, it was suggested that the paragraph be retained with drafting improvements. One delegation noted that the political offence ground for refusing extradition is not available to Parties to the Convention on the Prevention and Punishment of the Crime of Genocide adopted in 1948.

124. As regards the extradition of nationals envisaged in subparagraph 5(a), some representatives drew attention to the requirements of their constitution or domestic legislation which precluded the extradition of their nationals. In their view, the subparagraph should be deleted. Some other representatives suggested that in the event of the retention of the subparagraph, it should be modified to indicate that it was not only the constitution, but also the domestic law which could warrant a refusal of extradition. One representative expressed the view that extradition should not be refused on the grounds that the offender was a national of the requested State.

125. With regard to subparagraph 5(b), several representatives suggested that it be reformulated in the sense that extradition would not be refused on the grounds that the offence was committed outside the requesting State if the offence was intended to be committed in that State.

126. The deletion of paragraph 5(c) as drafted was favoured by several representatives. It was argued that none of the offences enumerated in paragraph 1 of article 2 should in any way be construed as political. A provision formulated in that sense was suggested for inclusion. On the other hand, it was stressed that such a provision would

derogate from fundamental principles of the constitution or the legal system of some States.

127. A number of representatives noted that paragraphs 6 and 7 dealt with questions of jurisdiction which would have to be considered in depth in connection with article 2 *bis*. One representative made the point that paragraphs 6 and 7 should not go beyond the scope of jurisdiction covered in paragraph 1 of article 2 *bis*. It was stressed that the principle contained in paragraphs 6 and 7, making prosecution mandatory if extradition was refused, should be retained in this article or in an appropriate place in the draft Convention.

128. As regards paragraph 6 it was suggested that it might be appropriate to adopt the standard phraseology used in the Convention for the Suppression of Unlawful Seizure of Aircraft, adopted at The Hague in 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted at Montreal in 1971.

129. Some representatives suggested that the principle *aut dedere aut judicare* should be reflected in the provisions of paragraph 7 which could be redrafted along the lines of article 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in 1973, and article 8 of the International Convention against the Taking of Hostages, adopted in 1979. One representative indicated that the principle should however be adjusted to the exigencies of the draft Convention which covered a wide range of offences.

130. As regards paragraph 8, some representatives expressed the view that the draft Convention provided an opportunity to adopt measures that would relax the procedural and evidential requirements for extradition. The paragraph should be redrafted so as to eliminate the possibility of a *prima facie* case requirement. In this connection it was suggested that the presentation of a valid arrest warrant or of an executory judgement of the requesting State should be sufficient to support a request for extradition. On the other hand, several representatives considered that the paragraph should be deleted as its provisions would be difficult to implement, *inter alia*, in countries where the establishment of a *prima facie* case was a paramount requirement.

131. Several representatives proposed the deletion of paragraph 9 as it was felt that it added nothing substantial to the article and would only create further difficulties for the Parties having concurrent jurisdiction. It was pointed out in particular that it did not solve the question as to who would determine which Party was in a better position to establish relevant facts; the decision on this matter should be left to the requested Party. One representative suggested that, if not deleted, paragraph 9 should be redrafted as a mere recommendation.

132. One representative proposed the deletion of paragraph 10 since he considered it superfluous.

133. Several representatives proposed that the article should not only cover persons who are sought for prosecution but also absconded convicted offenders.

134. A suggestion was made by some representatives for the inclusion of a provision concerning the enforcement of foreign sentences with a view to encouraging States to enter into bilateral or multilateral agreements enabling the transfer of convicted persons to their own countries to serve their sentence.

Article 6

135. The Group agreed to amend the title of the article to read: "Other Forms of Cooperation and Training" so as to indicate that the scope of cooperation envisaged in article 6 was distinct from the mutual legal assistance foreseen in article 5.

136. It was agreed to use a similar safeguard clause as had been agreed to in articles 7 and 14, modified to take into account the diversity of administrative structures and requirements.

137. Several representatives indicated that law enforcement cooperation should be conducted through the national centralized coordinating agency established pursuant to article 35 of the 1961 Convention and article 21 of the 1971 Convention. In order to cover both countries where such centralized agencies had been established, as well as those where the exchange of information and cooperation involved several governmental services, it was agreed to refer in subparagraph 1(a) to "competent national agencies and services".

138. The Group considered that the type of information to be exchanged should not be itemized as any listing was bound to be incomplete and to become obsolete. It was therefore agreed that subparagraphs (a)(i)-(iv) of paragraph 1 should be deleted.

139. Some representatives referred to the importance of the links between illicit traffic and other organized criminal activities and proposed the inclusion of a subparagraph covering this aspect. Several representatives expressed the view that the Group should refrain from going beyond its mandate which was to draft a convention concerning specifically the suppression of illicit drug trafficking and could not widen the scope of that convention by the inclusion of the proposed subparagraph. It was however agreed, as a compromise solution, that the exchange of information between Parties on illicit traffic could relate also to links with other criminal activities if the Parties concerned deemed it appropriate. A phrase in that sense was added at the end of subparagraph 1(a). One representative expressed disappointment at the unsatisfactory compromise which had been reached. He again emphasized that his country considered the question of links with other criminal activities to be of central importance to the illicit traffic in narcotic drugs. The international community was missing the great opportunity offered by the preparation of the draft Convention to fight the illicit traffic effectively in a real-life environment.

140. In order to spell out more precisely the kind of cooperation that was envisaged in subparagraph 1(b) of the preliminary draft, one representative proposed to divide the text into two separate subparagraphs covering, on the

one hand, cooperation between the law enforcement agencies of several countries at the investigative stage prior to the initiation of judicial proceedings and, on the other hand, the transfer of samples of controlled substances for analytical and investigative purposes. The Group agreed to the proposed revised formulation.

141. The introductory sentence to paragraph 2 was amended so as to make it clear that it would be for each Party individually to devise "specific" training programmes for its respective law enforcement agencies involved in the suppression of the illicit traffic.

142. Subparagraph 2(a) was amended so that the focus of the training programmes would be not only on the detection of the illicit traffic but also on its suppression.

143. It was agreed to replace the terms "laundering" and "proceeds", which appeared in subparagraphs (d) and (e), by the terms "concealment" and "property" in brackets, pending a fully accepted definition of these terms or their eventual replacement by other concepts.

144. The Group agreed that the provision of subparagraph 2(d) of article 13, which was not retained in the agreed formulation of that article, should be inserted as a new subparagraph 2(g), to read as follows: "(g) Control techniques in free trade zones and free ports". The Group also agreed to transfer to paragraph 2 an item originally found in paragraph 3, in a revised form to read as follows: "Modern law enforcement techniques".

145. It was suggested that the training programmes referred to in paragraph 3 should encompass the same topics as those mentioned in paragraph 2 and that the reference to the use of conferences and seminars to stimulate cooperation, as envisaged in paragraph 7 should be incorporated in paragraph 3. Paragraph 3 was reformulated accordingly.

146. The Group considered the text of paragraph 4 as redrafted by the Commission on Narcotic Drugs. It was agreed to replace the words "respective law enforcement agencies" by "competent national agencies and services", in conformity with paragraph 1.

147. To emphasize that the posting of liaison officers would not be mandatory, it was decided to indicate that States would consider this form of cooperation only where appropriate. It was also agreed to indicate that the appointment of drug liaison officers would be made on the basis of agreements or arrangements, as the Parties deemed appropriate.

148. The Group agreed to a proposal to add the words "and able to do so" at the end of paragraph 5.

149. The Group agreed to delete paragraph 6 as it was not considered necessary to have this type of provision in an international instrument.

150. One representative proposed the insertion of an additional paragraph to stress that operations by the law enforcement personnel of one Party in the territory of

another Party should not be conducted without the explicit consent of the Party on whose territory such operations take place.

151. While the concept expressed was shared by several representatives, the proposed formulation raised some objections. The Group accordingly invited interested experts to work out, through informal consultations, a generally acceptable text.

152. Following its reformulation, the proposed text received the general support of the Group which also endorsed the decision for its insertion in the article as a new subparagraph 1(c).

153. One representative indicated that the proposed subparagraph would not be acceptable unless a safeguard clause was introduced stipulating that the operations would be undertaken only if they were not contrary to national law.

154. The Group approved the text as amended to take this concern into account. One representative expressed reservations regarding the content of subparagraph 1(c) as a whole. Another representative expressed reservations as to the content of subparagraph 1(c), on the grounds that the joint teams and the conduct of their operations should be based solely on the arrangements concluded between the Parties concerned.

Article 7

155. The Group supported the inclusion in the draft Convention of provisions on the law enforcement technique of controlled delivery which was considered a major tool for combating drug trafficking at the international level. It was the general view that the article should provide a framework for action, limiting itself to the objectives of the technique. Bearing in mind that the technique of controlled delivery was essentially a covert police operation which, to be effective, had to be carried out with the utmost discretion, the operational details should be left to the competent national agencies.

156. Several representatives drew attention to the constitutional, legal and administrative difficulties which certain countries would face in adopting or applying what was for them a novel technique of law enforcement, which, for the time being, is not legal in some States. It was proposed that article 7 should accordingly be amended so as not to make its provisions mandatory.

157. The Group agreed to use the same safeguard clause as in article 14 as it was considered to be better suited to meet the concerns for State sovereignty than the clause in the initial draft. It also decided to amend the wording of paragraph 1 to indicate that the objective was to establish guidelines for the use of the technique of controlled delivery "at the international level".

158. Considering the implications which the implementation of this technique may have on the sovereignty of a country through whose territory passage takes place, several representatives insisted that controlled delivery should

be undertaken on the basis of prior agreements between the Parties concerned. Some representatives pointed out that the carrying out of an operation may require a prompt initial decision; it may therefore be necessary to resort to more expeditious informal arrangements between Parties. The Group agreed to include both possibilities of agreements and arrangements and decided that all such agreements or arrangements were to be "mutually consented to" in order to emphasize that the consent of Parties was a prerequisite to the initiation of controlled delivery.

159. So as to specify in a more concise form the goals sought in the utilization of the technique of controlled delivery, the Group agreed that the last phrase of paragraph 1 should be reworded as follows: "with a view to identifying persons involved in illicit traffic and to taking legal action against them".

160. It was agreed to delete paragraph 2 of the initial draft as it was considered that its provisions were covered in the amended paragraph 1.

161. In order to take into account the financial burden connected with controlled delivery operations, including, in particular, for transit countries, it was agreed to mention in paragraph 3 of the initial draft, renumbered paragraph 2, that decisions to use controlled delivery could be subject to financial arrangements between Parties, whenever they considered it necessary.

162. The Group agreed to delete paragraph 4 as it went into too much detail regarding the modalities of a controlled delivery operation. These could be covered as appropriate for specific cases in the agreements and arrangements mentioned in paragraph 1.

163. The provisions of paragraph 5 were considered to be complicated, rather confusing, too specific, and unadvisably binding. The clause concerning suspension of prosecution could give rise to difficulties because concurrent jurisdictions are involved and because of the principle of mandatory prosecution. One representative expressed the view of his Government that controlled delivery should not prejudice the right of the country of origin or of any transit State to prosecute. In the end, it was felt, however, that some reference to the problem of jurisdiction would be appropriate in the article with the understanding that it would be dealt with by the Parties in the agreements or arrangements worked out between them. It was therefore agreed to include this consideration at the end of new paragraph 2.

Article 8

First session

164. Several representatives expressed support for the inclusion of measures concerning the monitoring or control of specific chemicals used in the illicit processing or manufacture of narcotic drugs or psychotropic substances. The monitoring of shipments of precursor substances produced in industrialized countries was said to be of particular importance for certain developing countries to assist them in their fight against the illicit manufacture of narcotic drugs or psychotropic substances. One representative

drew attention to the two main constituent elements of manufacture, namely drugs and essential chemicals; he stated that in view of the stringent controls on drugs provided for under the 1961 Convention it was necessary and only fair that equally stringent controls should be established, when possible, on essential chemicals.

165. It was stressed, however, that control measures such as those envisaged in article 8 should take into account the fact that many precursors and essential chemicals had legitimate uses in the manufacture of a wide range of products and that their lawful trade should not be hindered.

166. It was also pointed out that the acceptance of a particular control system would depend on what substances would be submitted to such a control. It was therefore essential to establish criteria to identify the substances to which the provisions of the article would apply. In that connection it was suggested that if the control measures were to be effective, the number of substances to be covered should be limited to those precursors and basic chemicals used mainly in the illicit manufacture of narcotic drugs and psychotropic substances.

167. One representative drew attention to the alternative text for the whole article proposed by his Government in paragraph 678 of the working document.

168. It was decided that the discussion of the article as a whole would continue through consultations among interested experts with a view to arriving at a revised draft that would be acceptable for all.

169. The consultations were conducted among representatives who supported the drafting of an article on the subject, with the participation as well of representatives who were not in favour of including such an article. The results of those consultations were submitted to the Group in the form of a draft text reflecting the common understandings.

170. Commenting on the draft, several representatives expressed the view that it constituted a valid starting point for the further consideration of the article.

171. Commenting more specifically on the draft, one representative noted some contradiction between the proposed definitions and certain substances appearing in List A and List B. He also stressed the need to re-examine more closely the relation which should be established between this article and the relevant provisions of the existing drug control conventions.

172. The Group agreed on a number of proposed textual changes. There was also general agreement that further consideration of the revised draft article should take place at the second scheduled meeting of the Group and that in view of the highly technical nature and complexity of the provisions, it would be advisable to arrange for chemical and pharmaceutical experts, from the various delegations, to meet in the first days of the meeting in order to review the present draft and report to the Group. There was consensus to adopt such a procedure.

Second session

173. The Group resumed its consideration of article 8 at its second session on the basis of the reformulated draft arrived at during its first session.

174. Several representatives reiterated their support for the inclusion of a set of appropriate measures for the monitoring or control of precursors and chemicals used in the illicit processing or manufacture of narcotic drugs or psychotropic substances, to the extent that such precursors and chemicals were not covered by the existing drug control treaties. Divergent opinions were expressed regarding whether such provisions should be of a voluntary or mandatory nature. It was argued in this connection that consideration should be given to the specific situation of each State concerning the production and trade of such substances.

175. Some representatives expressed the view that some of the measures of control envisaged in paragraph 8, and all of those in paragraph 9, would impose an excessive bureaucratic burden on exporting countries with no guarantee of achieving effective results. Such provisions should accordingly be deleted. Other representatives voiced preference for provisions along the lines of the monitoring systems existing in their own countries, based on cooperation between law enforcement and industry; such systems, which were of an informal nature, focused on tracking suspicious consignments and preventing their diversion to the illicit traffic. In their opinion, Governments should be allowed maximum flexibility in adopting adequate measures to meet the prevailing circumstances in their respective countries. One representative reserved the right to make further comments on paragraphs 8 and 9 at the Commission on Narcotic Drugs.

176. Some representatives indicated that in view of the stringent controls which countries producing narcotic raw materials were bound to exercise under the 1961 Convention and which imposed on them a considerable administrative burden, it was only fair that equally strict controls should be established, whenever possible, on the precursors and chemicals originating from industrialized countries which were utilized in the illicit manufacture of narcotic drugs. Some representatives pointed out that such provisions would assist importing countries, particularly those with extensive frontiers, in fighting effectively the illicit manufacture of narcotic drugs and psychotropic substances within their borders.

177. There was general agreement that the control measures envisaged in the article should not be more stringent than those applying to the substances scheduled in the existing drug control treaties.

178. Several representatives pointed out that the nature and scope of the control measures which could be accepted for inclusion in article 8 depended on what substances would eventually be placed in List A or List B. As regards the definitions proposed in the draft for "immediate precursors" in List A and "essential chemicals" in List B, it was felt that in the absence of acceptable scientific

definitions of those terms they might give rise to divergent interpretations in the legal context of the Convention. The qualification of substances as "immediate precursors" or "essential chemicals" would result implicitly from their inclusion in one or the other lists and this approach could be reflected in definitions of those terms, or of other appropriate terms, in article 1. It was therefore considered indispensable to establish a more systematic process with guiding criteria for the identification of substances to be placed under control and for their inclusion in the respective lists. In accordance with the suggestions made in the course of the discussion, the Division of Narcotic Drugs, in consultation with the interested experts, presented to the Group for its consideration a compromise draft of the revised lists of substances and the comprehensive process for placing the substances therein.

179. The Group endorsed the recommendation arrived at during the informal consultations to delete the definitions proposed in the earlier draft and to adopt a more legal approach, in line with the corresponding provisions of the international drug control treaties, by simply referring in the text of the article to substances in List A or in List B. The Group approved paragraphs 1-3 as amended in that sense and agreed to the inclusion, in a new paragraph 4, of a set of guiding criteria for the identification of substances that might be made subject to the international monitoring system and placed in the respective lists.

180. The Group also agreed to include in its draft, tentatively, certain substances in List A and List B.

181. Two representatives proposed that poppy straw should be inserted in one of the Lists. Pointing out that the reports of the International Narcotics Control Board for 1985 and 1986 had confirmed that poppy straw is susceptible to abuse and trafficking and had suggested increased control measures on this product, one representative stated that the non-inclusion of poppy straw under the same regime of control as the substances in Lists A and B cannot but erode the effectiveness of the proposed new convention. Several other representatives objected to this proposal for the reason that, if there were a need to regulate poppy straw, it would be more appropriate to do so under the 1961 Convention, and the appropriate approach would be to seek to amend that Convention.

182. Several representatives drew attention to the fact that while the terminology of the existing drug control treaties should be followed whenever relevant in order to ensure the necessary coordination among related instruments, new terms had to be used to meet the particular needs of the draft Convention in preparation; it was essential that they be properly defined to avoid conflicting interpretations. In order to be more specific and avoid confusion, the Group agreed that the term "controlled substances", wherever it appeared in the text, would be replaced by the words "narcotic drugs and psychotropic substances" and that, in the absence of a more adequate and generally accepted designation for the "immediate precursors and essential chemicals" covered under article 8, it would be preferable at this stage to substitute the generic term "substances in List A and List B".

183. The Group agreed to insert the word "processing" before the word "manufacture" throughout the text of article 8 to highlight the fact that, in some cases, processing refers to the preparatory stages in the illicit manufacture of narcotic drugs and psychotropic substances.

184. It was agreed that paragraph 4 of the reformulated draft (new paragraph 5) should be amended to indicate, in line with the language used in the 1971 Convention, that the assessment of the Board "shall be determinative as to scientific matters". The Group decided to delete the last part of paragraph 4 as its provisions were made redundant by the Group's earlier decision to include criteria for the identification of substances to be brought under control. The Group also agreed to maintain unchanged paragraphs 5-7 as they appeared in the reformulated draft (new paragraphs 6-8).

185. Regarding paragraph 8 (new paragraph 9), a proposal was made to combine the provisions of subparagraphs (a) and (b) in a single subparagraph in order to eliminate the apparent contradiction between the mandatory character of subparagraph (a) and the voluntary formulation of subparagraph (b). The furnishing of information by manufacturers and traders was generally considered a key element in the cooperation to be developed in the framework of the monitoring system that Parties would have to establish and maintain. The merger of the two subparagraphs therefore appeared desirable and was approved by the Group.

186. As regards the question whether it would be appropriate to say that the established monitoring system "may" or "should" be conducted in close cooperation with industry, one representative expressed the view that in this instance the word "may" was more appropriate as it would enable the implementation of mandatory systems where cooperation was not efficient. It was argued by several other representatives that the obligation to implement the system through cooperation should be clearly indicated by the term "shall". It was finally agreed that the measure should be made mandatory if it was to prove really effective and the word "shall" was correspondingly substituted.

187. It was proposed that subparagraph 8(c) (new subparagraph 9(b)) be amended to provide not only for the seizure but also for the forfeiture of substances used in or intended for the commission of any of the offences referred to in article 2. Several representatives opposed the inclusion of forfeiture in this particular provision on the grounds that decisions to confiscate property or transfer ownership would not necessarily be within the sphere of competence of the administrative services responsible for implementing the monitoring system envisaged in article 8. It was felt that the matter of forfeiture did not belong in article 8 and should be considered in the context of the relevant legal provisions of articles 2 and 3.

188. Commenting on subparagraph 8(d) (new subparagraph 9(c)), some representatives considered it desirable to introduce a time element in that provision as it was vital that the authorities be notified as promptly as possible of suspicious transactions. One representative expressed the

opinion that the required notification of authorities should be based on a more precise consideration than the mere suspicion that the substances were destined for illicit manufacture of narcotic drugs or psychotropic substances and he suggested that "a well-founded presumption" should exist. It was further proposed to refer to competent national agencies and services rather than to appropriate authorities in keeping with what had been done in article 6. The Group agreed to revise the formulation of subparagraph 8(d) taking into account some of the above comments.

189. During the consideration of subparagraph 8(e) (new subparagraph 9(d)), it was proposed by several representatives that the commercial documents referred to in that subparagraph should also include information regarding the form of payment. Such information, in their view, was a key element in tracing illicit transactions. Some other representatives held the view that the inclusion of such information would not serve any useful purpose and that the monitoring system established under subparagraph (a) should in itself ensure an adequate overview of the financial operations involved. As a compromise solution, it was suggested that such a requirement might be introduced under the clause relating to suspicious transactions in subparagraph 8(d). The Group agreed to a revised formulation of subparagraph 8(d) incorporating this suggestion.

190. One representative, who had made a reservation as regards the propriety and tenor of article 11 *bis* (see paragraph 227 below), made a similar reservation with respect to subparagraph 8(e).

191. Several representatives expressed diverging views regarding the requirement in subparagraph 8(e) that commercial documents such as invoices, cargo manifests etc. should include the name of the consignee. It was pointed out by one representative that this requirement was impractical as in many cases the ultimate consignee was not known to the importer or wholesaler. It was suggested that the name of the consignee could be included in commercial documents where the information was known. The Group agreed provisionally to qualify the requirement by inserting in square brackets that the name and address of the consignee should be indicated "when available". Two representatives placed on record that they would have a reservation to the mention of the consignee in this subparagraph in the absence of the qualifying insertion.

192. It was pointed out that compliance with the requirement in subparagraph 8(e), that the names of substances as stated in List A and List B be included on commercial documents, would be extremely difficult as many of the substances being imported or exported were known under different names. It was however recognized that a uniform nomenclature was highly desirable if the provisions of article 8 were to be implemented effectively. It was therefore suggested that the Division of Narcotic Drugs could convene an expert group to standardize the names of the substances which may be placed under the monitoring system of the draft Convention. Pending the adoption of such a nomenclature, it was agreed to retain in square brackets the reference to List A and List B.

193. In subparagraph 8(f) (new subparagraph 9(e)) it was suggested that a formulation along the lines of article 11, paragraph 7, of the 1971 Convention would be more appropriate and the Group agreed to amend the draft accordingly.

194. Commenting on paragraph 9 of the reformulated text (new paragraph 10) several representatives expressed the view that the provisions as drafted were too rigid and detailed. They should not apply to all transactions concerning the substances in List A but only to suspicious consignments. Furthermore the envisaged monitoring system might not keep pace with technological developments and would create considerable workload for Government and industry as more substances would be brought under control. The paragraph should accordingly be deleted. On the other hand, several other representatives considered the provisions of the paragraph to be crucial for the implementation of the convention and argued for its retention. Some other representatives expressed the view that while the exchange of information could serve a useful purpose, the provisions should entail only minimum requirements leaving the detailed modalities to be decided by the Parties. The Group agreed to a compromise solution which took into account the various concerns expressed by the experts. Three representatives placed on record their reservations concerning the mandatory nature of the provisions.

195. In its consideration of paragraph 10 of the reformulated text (new paragraph 11) the Group confirmed its earlier tentative decision that the reports should be furnished to the Board on an annual basis. Regarding the reporting of other substances not included in List A or List B as provided for in subparagraph (b), some representatives held the view that this requirement was questionable as it dealt with substances that might not be of concern to all Parties, while it might adversely affect the responsibility of Parties to notify in due time, in accordance with their obligation under paragraph 2, the substances which may warrant inclusion in the lists. Some other representatives were of the view that such reporting would enable the Board to gather data on different substances of abuse in different countries and assist the Board in making its assessment as to their possible inclusion in List A or List B. To take into account these divergent positions, a suggestion was made that such reporting should concern substances which, in addition to being used in the illicit processing or manufacture of narcotic drugs and psychotropic substances, were deemed sufficiently significant by Parties to be brought to the attention of the Board. The Group agreed to this formulation and adopted paragraph 10 amended accordingly. It also adopted paragraph 11 as it appeared in the reformulated text (new paragraph 12).

196. Commenting on paragraph 12 of the reformulated text (new paragraph 13), the view was expressed that its provisions should not be limited to preparations intended for therapeutic uses as there were other preparations which also had legitimate industrial uses. One representative proposed that the paragraph should be worded so as to take into account such legitimate uses provided that the preparations in question were compounded in such a way

that they could not be easily used or recovered by readily applicable means in sufficient quantity to permit significant illicit processing or manufacture of a narcotic drug or a psychotropic substance. The Group agreed to such a formulation.

Article 9

197. The Group agreed to amend paragraph 1 to make it clear that the provisions of the article were aimed only at the trade of materials and equipment intended for the "illicit" manufacture of narcotic drugs and psychotropic substances.

198. Many representatives held the view that the control measures contemplated in paragraphs 2 and 3 of the original draft would be difficult to implement and could have undesirable negative effects on the legitimate international trade of materials and equipment used by the pharmaceutical industry. The Group considered an alternative proposal to replace paragraphs 2 and 3 by a single paragraph providing for the exchange of information concerning the specific shipment of materials and equipment suspected of being intended for use in illicit manufacture of narcotic drugs and psychotropic substances. It was decided that such a provision would not serve a useful purpose in article 9, inasmuch as its objective was covered by the provisions of article 6 dealing with the exchange of information in the context of cooperation between law enforcement agencies.

Article 10

199. Commenting on the text of the article in the preliminary draft, some representatives expressed the view that the need for such an article in the new draft Convention was questionable since some of the proposed measures for the eradication of narcotic plants cultivated illicitly were already included in article 22 of the 1961 Convention. It was suggested that the relationship between the proposed article and article 22 et seq. of the 1961 Convention should be clarified and that appropriate reference to the relevant provisions of that Convention should be made in article 10. Several speakers considered that the article in its present form did not add any substance to the corresponding provisions of the 1961 Convention, while another representative pointed out that it was, in fact, the only text dealing specifically with modalities for the suppression of the illicit cultivation of narcotic plants.

200. A proposal was made by one representative that the provisions of paragraphs 1 and 2 should be amended to read as follows:

"1. The Parties shall take appropriate steps to prevent the illicit cultivation of the poppy plants, coca bushes and cannabis plants that are being illegally grown in their territories, and shall introduce effective measures for their elimination. The measures adopted must be compatible with fundamental human rights, respect for the traditions of national and regional groups, and the protection of the environment.

"2. The Parties shall collaborate with a view to adding to the effectiveness of the eradication measures

through crop substitution and integrated rural development techniques and through preferential tariffs for the substitute products, taking into account the various types of these products and the resources available to them, as well as the socio-economic circumstances existing in the illicit growing zones. Parties with common borders shall endeavour to cooperate in eradication programmes within the zones situated along these borders."

201. The amendment received the full support of several representatives. Some others objected to it on the grounds, in particular, that while respect for human rights was an unquestionable requirement, traditions may often be subject to change; moreover, the reference to preferential tariffs, which touched upon issues of international trade, fell outside the scope of the draft Convention and beyond the competence of the Group.

202. Several representatives expressed the view that provisions of the article dealing with eradication, which concerned only the supply side, should be balanced by the inclusion of provisions dealing with demand reduction. In their opinion the elimination of illicit demand was a major factor in dealing with the illicit traffic.

203. A proposal in that sense was made by one representative and supported by many others. It consisted in two additional paragraphs as follows:

"3. States with high rates of illicit demand shall adopt appropriate measures to prevent illicit consumption, and shall endeavour to achieve, as soon as possible, genuine reductions in their internal consumption of drugs through vigorous programmes of education, prevention and rehabilitation.

"4. To this end, these States shall allocate the economic, technical, scientific and human resources necessary to achieve genuine progress towards the elimination of the problem of the illicit consumption of narcotic drugs and psychotropic substances."

204. While recognizing the importance of demand reduction, some other representatives were of the view that the convention, which had a penal law perspective, should deal exclusively with such matters; it should not attempt to cover other aspects of the drug problem such as prevention, treatment and rehabilitation or illicit consumption. Other representatives expressed the view that the scope of the convention was broad and that it did not mostly concern penal law.

205. With a view to reconciling the divergent positions held regarding the substantive content of this article, the Group decided that the discussion would continue informally among interested experts.

206. As a result of these informal consultations, a compromise draft of article 10 was submitted to the Group for its consideration. The Group adopted the said draft by consensus.

207. One representative expressed his reservation concerning that part of the title of the article relating to the elimination of illicit demand and about paragraph 3. He

thought that a balance in the draft was necessary between the concepts of illicit demand and the links between illicit traffic and other criminal activities, because both concepts would have a direct impact on future international cooperation against illicit trafficking.

208. Another representative proposed that the words "traditional domestic" in paragraph 1 be replaced by the word "licit". However, as that paragraph had been adopted by the Group at an earlier stage of its discussions, it was considered more appropriate that this proposal be reflected in the report so that it might be considered at a later stage of the preparation of the draft Convention.

Article 11

209. The Group agreed that the draft Convention should contain provisions to ensure that the means of transport operated by commercial carriers were not used in the illicit traffic. Some representatives proposed that article 11 should be expanded to encompass private as well as commercial carriers in view of the importance of drug seizures linked with the international movement of privately owned and operated means of transport. In the view of one representative, it was not clear whether the scope of the article covered only ships and aircraft or included all means of transport.

210. The Group agreed to limit paragraph 1 to a statement of the general obligation for Parties to take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the illicit traffic. One representative expressed the view that the inclusion of a provision requiring Parties to increase security at international ports was not appropriate in the context of the convention.

211. On the basis of the experience gained in his country, that effective control in the area covered by article 11 could be best achieved with the cooperation and consent of commercial carriers, rather than by legislative measures, one representative proposed that the convention should positively encourage Parties to enter into special arrangements with commercial carriers and reformulated paragraph 5 to this effect. Some other representatives expressed the view that such a provision might not be applicable within all domestic legal systems. As a compromise the Group agreed to insert in paragraph 1 a revised formulation of the proposal indicating that such special arrangements could be one of the measures available to Parties in fulfilling their obligations under this article.

212. The Group decided not to specify that searches should be "thorough" as this was implicit.

213. Several representatives indicated that it was not clear whether the searches in question were within the ambit of criminal proceedings or of control measures falling within the competence of customs authorities.

214. The level of suspicion on the basis of which searches were to be undertaken was subject to different interpretations. Several representatives were of the view that searches should be effected only when there was suspicion of a serious nature. It was also pointed out by

some speakers that customs authorities undertook searches as part of their mandate, which did not require suspicion to justify such searches, and that this factor should be taken into account.

215. Divergent views were expressed regarding the modalities and severity of sanctions which faulty commercial carriers would face. In view of the difficulty of establishing an internationally acceptable criterion regarding the precautions which commercial carriers had to take, it was pointed out that the responsibility and liability of carriers should be involved only if negligence on their part could be established, or when they had been accessories to drug trafficking. In the opinion of several representatives, the convention should leave it to the respective Parties to determine within their own national penal law, whether and when sanctions should be applied and whether these sanctions would be of an administrative or criminal nature.

216. With a view to reconciling the divergent positions held regarding the substantive content of paragraphs 2, 3 and 4, the Group decided that the discussion would continue informally among interested experts. Following consultations, a compromise draft was submitted to the Group for its consideration.

217. By using the formula "each Party", the new text now indicates that the measures envisaged in paragraphs 2, 3 and 4 were to be taken individually by Parties within their own jurisdiction.

218. An amended part of the introductory sentence of paragraph 2 and paragraph 3 of the initial draft were combined into paragraph 2 of the compromise draft. The measures provided in paragraph 2 were grouped into category (a) concerning more specifically those carriers having their principal place of business within the territory of the Party and category (b) dealing with any carrier operating within the territory of the Party. It was, however, the understanding that Parties could apply, in appropriate cases, all the measures envisaged under subparagraphs 2(a) and 2(b) to all carriers.

219. As interpreted by one representative, the wording of the introductory sentence indicated that the measures spelled out in subparagraphs 2(a) and 2(b) were illustrative of those measures that States "may include" in their national legislation to ensure that means of transport operated by commercial carriers are not used in the illicit traffic.

220. The modality of cooperation between States and carriers included in subparagraph 3(b) of the original draft was dealt with separately in the new paragraph 3. In that paragraph, reference is made to "point of entry and exit and customs control areas" so as to cover the diverse factual situations prevailing in different countries.

221. The Group approved by consensus paragraphs 2 and 3 as redrafted.

222. The provision concerning sanctions that might be imposed on carriers, which appeared in the second sentence of the initial paragraph 2, was reformulated in a

separate paragraph 4. It was understood that should sanctions be considered appropriate these should be of an administrative rather than of a criminal nature. Several representatives were of the view that, as reformulated, paragraph 4 added nothing to the rights already enjoyed by States under general international law and the Group consequently agreed to delete it. Two representatives expressed reservations about the deletion and stated that they would revert to the matter at the second meeting in October.

Article 11 bis

First session

223. One representative proposed for consideration at a later stage, as an additional article, the proposal of his Government in paragraph 811 of the working document, which could not be accommodated in the framework of article 11, to the effect of ensuring the correct labelling of consignments of narcotic drugs and psychotropic substances, the accurate use of the listed International Non-Proprietary Names, and the proper utilization of accompanying papers, customs documents and manifests.

Second session

224. The Group considered the new paragraph 11 *bis* as proposed at its first session.

225. In support of the inclusion of such a provision, reference was made to recommendation 8 of the Inter-regional HONLEA calling for measures to ensure that consignments of narcotic drugs and psychotropic substances be correctly described on all accompanying papers, customs documents and manifests.

226. Some representatives held the view that the inclusion of such an article would not serve any useful purpose. On the contrary, the proposed requirement that consignments should be properly labelled might induce criminal diversion. Moreover, the reference to substances in List A or List B was inappropriate in view of the provisions of article 8.

227. Following informal consultations, a revised draft was placed before the Group requiring that exports of narcotic drugs and psychotropic substances be properly documented and that the consignments being exported were not mislabelled. The Group agreed on the proposed reformulation. Several delegations requested the deletion of the square brackets at the end of paragraph 1, so that the consignee would be mentioned only in so far as he is known. Three representatives explained the difficulties they had in accepting the new article because of some of its legal and practical implications. In their opinion, it would require reconsideration at a later stage in the light of further appropriate consultations. They consequently placed on record their reservation as regards the propriety and tenor of the new article approved by the Group.

Article 12

228. Several representatives expressed support for the general tenor of the draft article. However, it was noted by

some representatives that a number of its provisions might give rise to problems from the point of view of criminal law or the international law of the sea. One representative emphasized that any action against ships by States other than the flag State in cases where the evidence of illicit traffic was not clear and manifest could lead to abuses and might undermine legal principles which were important. A treaty provision waiving the flag State's consent could lead to traffickers merely having their vessels registered under a flag of convenience, and consequently such treaties would probably not serve the purposes intended.

229. The Group approved, without amendment, the text of paragraph 1 which sets out the general obligation for States to cooperate to the fullest extent possible to suppress the illicit traffic.

230. In connection with paragraph 2, it was suggested that it would be desirable to extend its provisions to cover unregistered ships which are required to be registered, as well as registered ships. It was also suggested that rather than speaking of "registered under its laws" it would be preferable to use in that paragraph, and throughout the article, the expression "flying its flag" which was the common term of the article.

231. The Group approved for paragraph 2 a revised formulation, taking into account the above suggestions.

232. The reference in the draft to the United Nations Convention on the Law of the Sea was not considered appropriate by some delegations as that Convention, after its entry into force, might not be binding on all Parties to the present instrument. Divergent views were expressed regarding the use of the expression "high seas" in paragraph 3. Some representatives were in favour of retaining that term while others objected to it and deemed it preferable to rely on the concept of territorial sea or waters. In lieu of the term "high seas" the Group agreed to refer instead to the area "beyond the external limits of the territorial sea", without prejudice to any rights enjoyed by the coastal State seaward of those limits. Some representatives recalled the existence of a contiguous zone in which States had exclusive rights in respect of matters relating to customs, taxation, health and immigration. The Group agreed that the reservation concerning the rights of the coastal State in the new text included that zone. Some representatives expressed reservations with regard to this formulation, in view of the fact that, as signatories of the United Nations Convention on the Law of the Sea, they would construe and implement the provisions of this article in a way compatible with their obligations under that instrument.

233. The Group approved the proposal made by several representatives that with regard to vessels flying the flag of another Party, the prior consent of the flag State must be given before a vessel may be boarded, searched and seized. In the case of seizure, it was emphasized that this action should be contemplated only if evidence of the vessel being engaged in illicit traffic was discovered. Paragraph 3 was amended to reflect these requirements. In view of the inclusion of the requirement for prior permission, the reference to vessels flying the flag of the boarding

State was considered superfluous, as a flag State had jurisdiction over its vessels in the situation envisaged in that paragraph. Similarly, reference to vessels not displaying a flag or markings of registry was unnecessary as the question of prior permission did not arise in such cases. Subparagraphs (a) and (c) were consequently deleted.

234. It was pointed out that the authority to be designated by each Party, in accordance with paragraph 4, would not necessarily be competent to act upon requests from another Party, but only to respond to them in an expeditious manner. The wording was amended accordingly. The Group also approved a proposal to amend the second and third sentences of paragraph 4 so as to indicate more precisely at what time the flag State should designate an authority to receive and respond to requests from other Parties for the purposes of paragraph 3, as well as the time limit for the notification of the designation to all other Parties.

235. The Group agreed to amend paragraph 5 so as to cover existing as well as future treaties, whether they be multilateral or bilateral. In conformity with the corresponding deletion made in paragraph 3, the Group agreed to delete subparagraph (a) referring to judicial requirements where the vessel in custody was flying the flag of the boarding State.

236. The Group approved a proposal to delete paragraph 6 as the provision which conferred to one Party alone the right to call in question an agreement or arrangement was not in keeping with international practice.

237. In order to emphasize and safeguard the overall interest of the flag State in any action undertaken pursuant to the provisions of the article, the Group agreed to add a new paragraph 6 to the effect that the flag State concerned should be informed of the results of such action.

238. Several representatives supported a proposal to include an indemnity clause similar to that in article 110, paragraph 3, of the United Nations Convention on the Law of the Sea, relating to piracy, to cover the loss or damage which may be sustained by vessels subjected to searches which prove unwarranted. Many representatives objected to the proposed inclusion, pointing out that the situation in article 12, where prior permission from the flag State was required, was different from that in article 110 and that such a provision would inhibit action by States in the fight against the illicit traffic. The proposal was not agreed upon. One delegation expressed the opinion that the draft Convention should contain a liability clause which would, among other provisions, clearly stipulate the obligations of the requesting and requested Parties.

Article 13

239. During its consideration of article 13, which the Commission on Narcotic Drugs at its thirty-second session had agreed to retain as formulated in the preliminary text, one representative referred to the proposal of his Government for a more comprehensive draft as reproduced in paragraph 867 of document DND/DCIT/WP.1. There was general agreement that those proposed provisions were too

detailed and would be difficult to implement because of their complexity. It was decided that the initial version of article 13 should remain the basic text for discussion in the Expert Group.

240. It was agreed that in order to ensure the effectiveness of the measures envisaged to suppress the illicit traffic in free trade zones and free ports, which were particularly vulnerable to the illicit traffic, paragraph 1 should be amended to indicate that such measures should be "no less stringent" than those applied in other parts of the national territory.

241. The Group agreed that the wording in subparagraph 2(a) should be amended to take into account the fact that it was within the normal competence of States to empower their appropriate authorities to perform search operations. It was also agreed not to limit the provisions to "incoming and outgoing vessels" but to cover "cargoes" as well.

242. The Group agreed to extend the provisions of the article to include the "search of crew members and passengers and their baggage" in free trade zones and free ports. It was pointed out that systematic or indiscriminate search operations would raise practical difficulties and might have legal implications as regards respect for the rights of individuals. It was therefore agreed that the provision of subparagraph 2(b) should refer to the search of crew members and passengers only "when appropriate".

Article 14

243. One representative reiterated the proposal of his Government to qualify the provisions of this article, as well as all the other articles of the draft Convention, by the clause "within the basic principles of the existing national legal system". Several representatives expressed support for this formulation as far as article 14 was concerned. It was, however, the general view that such a formulation might not prove valid for all the provisions of the draft Convention.

244. It was also agreed to limit the scope of the safeguard clause to basic principles of national legal systems, and not to extend it to norms, so as to allow the possibility for Parties to adopt or amend their legislation to implement the provisions of the new draft Convention inasmuch as it did not interfere with the basic principles of their respective legal systems.

245. The Group agreed on a revised safeguard clause for the article reading as follows: "consistent with the basic principles of their respective national legal systems".

246. It was suggested that an appropriate safeguard clause protecting the sovereignty of the State Parties might be the subject of a separate article in the draft Convention. In that connection it was pointed out that safeguard clauses such as those included in the existing Conventions were intended to indicate the freedom of Parties to choose the modalities for the execution of the binding provisions of the Conventions.

247. It was agreed that the word "prevention" in the title of article 14 should be replaced by the word "suppression" so as to bring the title in conformity with the provisions of paragraph 1 and to cover simultaneously the concept of preventive and repressive action as referred to in subparagraph 2(a).

248. Several representatives expressed the view that the provisions of the article should not infringe the right of privacy and secrecy of communications. To that effect it was agreed that the word "control" in subparagraph 2(a) of the text as amended by the Commission on Narcotic Drugs should be deleted.

Preliminary exchange of views on the preamble, implementation measures and final clauses

249. In commenting on the preamble, several representatives indicated that it should be made more concise. It was also suggested that it should state the general guiding principles underlying the various provisions.

250. Some representatives expressed the view that the preambular paragraphs should not be selective but cover all the elements contained in the substantive articles of the convention. In that connection the preambular paragraphs should follow the same sequence as the articles in the convention.

251. One representative emphasized the importance of retaining in the preamble the reference to the links between drug trafficking and other associated organized criminal activities.

252. Another representative reaffirmed the importance of indicating in the preambular paragraphs the relationship between this convention and the existing drug control treaties.

253. Several representatives expressed satisfaction with the general approach and formulation of the draft articles on implementation.

254. One representative was of the opinion that a reaffirmation of the rules of customary international law in the present convention would be appropriate in view of the many questions referred to in this convention that are not entirely regulated by its provisions.

255. Article 1 setting out general obligations for the Parties was considered superfluous as it did not add to the specific obligations contained in each particular article. Its deletion was therefore suggested.

256. As regards the functions entrusted to the Commission on Narcotic Drugs by article 2, it was suggested that in accordance with the wording used in article 8 of the 1961 Convention, the article should state that the Commission "is authorized" to consider all matters pertaining to the aims of the convention.

257. The reporting procedure introduced in article 3 was commented upon by several speakers. Regarding the periodicity of the reports, it was stressed that annual reports would impose an excessive burden on Governments

as well as on international organizations concerned; it would be preferable to phase out their submission in a flexible manner. As to their content, it was proposed that in addition to laws and regulations, they could usefully include the text of bilateral agreements or arrangements and refer not only to significant cases of international traffic and seizure, but also to instances of controlled delivery, mutual legal assistance and other relevant elements. The outcome of judicial proceedings carried out under the provisions of the convention could also be of interest.

258. It was suggested that in view of its content, a more appropriate title for article 4 would be "National coordination agencies". As regards paragraph (e) concerning the transmission of legal papers, it was felt that it should be incorporated in article 5. The substance of paragraph (e) could also with advantage be transferred elsewhere in the convention.

259. On the question of what body should be referred to under article V, the view was expressed by several representatives that it would not be desirable to establish a new committee for the purpose. The Commission on Narcotic Drugs and the International Narcotics Control Board, which had efficiently discharged their functions under the existing Conventions, would be able to perform the tasks contemplated in article 5. The opinion was expressed that a committee of the Commission, as suggested in the Secretariat's draft, composed of experts serving in their personal capacity could, however, play a useful role as the first level of control which would transmit its findings to the competent policy-making organ.

260. During the preliminary exchange of views on final clauses, several representatives expressed their preferences for either variants proposed in the working document, or for a combination of both.

261. Several representatives indicated that variant B of article 1, particularly the formulation: "open for signature by all States", was simpler, more succinct and corresponded to the current practice in the law of treaties. A reservation was expressed concerning the final clauses in relation to the position of the European Communities and their member States under the draft Convention.

262. With regard to article 3, concerning territorial application, some representatives were of the view that variant A was outdated and that a more suitable formulation was required.

263. One representative stated that the procedure for amending the convention as proposed in article 5, paragraph 2, was not considered satisfactory as it imposed too strict a deadline in a rather loose *modus operandi*. Another representative suggested that the agreement of a two-thirds majority of Parties to the convention might be an appropriate criterion for the entry into force of amendments, and this suggestion was supported.

264. In the view of several representatives, the formulation of paragraph 3 of article 6 was not acceptable as the exceptional reservations which certain States would be

authorized to make might be incompatible with the objectives and *raison d'être* of the convention. The view was also expressed that the question of reservations could be properly addressed only after the substantive articles had been finalized.

265. With regard to the settlement of disputes, as envisaged in article 7, two representatives expressed their reservation regarding the compulsory jurisdiction of the International Court of Justice; in their view, disputes must be settled between Parties by mutually agreed methods.

266. It was suggested that an article be added concerning the authentic texts of the convention and the transmission of certified copies to States Parties.

267. Several representatives indicated that at the scheduled second meeting of the Group, they would be in a position to present more specific proposals and amendments in connection with the detailed consideration of the preamble, implementation measures and final clauses.

DOCUMENT E/CN.7/1988/2 (PART IV)*

Report of the open-ended intergovernmental expert group meeting at its third session

[Original: English]
[8 February 1988]

Chapter I

ORGANIZATION OF THE MEETING

1. The third session of the open-ended intergovernmental expert group convened from 25 January to 5 February 1988 and held a further 15 plenary meetings. The third session of the Expert Group was attended by 174 experts from the following 62 States: Argentina, Australia, Austria, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Malawi, Malaysia, Mexico, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Peru, Poland, Portugal, Saudi Arabia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

2. At the 1st meeting of the third session, on 25 January 1988, the Expert Group took note of the fact that four of the officers who had been elected at the first session and were at the second session would again be present at the

*Excluding annex I and the corrigenda pertaining to it.

third session, but that the post of Third Vice-Chairman, representing the African region, was vacant. In the latter case, it was agreed that it would be appropriate to proceed to the election of a replacement. Accordingly, at the 4th plenary meeting of its third session, on 28 January 1988, the Expert Group elected by acclamation Claon Denis Glohi (Côte d'Ivoire) to the post of Third Vice-Chairman. The officers of the third session were therefore:

Chairman: Enrique Parejo González (Colombia)

First Vice-Chairman: Gioacchino Polimeni (Italy)

Second Vice-Chairman: E. A. Babayan (Union of Soviet Socialist Republics)

Third Vice-Chairman: Claon Denis Glohi
(Côte d'Ivoire)

Rapporteur: Hema Weerasinghe (Sri Lanka)

3. The Expert Group had before it a provisional agenda (DND/DCIT/WP.6) and a provisional timetable (DND/DCIP/WP.7). The Expert Group took note of the fact that at its third session it should, if possible, complete its consideration of articles 1, 3, 4 and 5 as well as the preamble implementation articles and final clauses. The Expert Group continued to base its discussions on working document DND/DCIT/WP.1, which it had before it at its first and second sessions. During its third session, the Expert Group also had before it the report on its first and second sessions (E/CN.7/1988/2 (Part II), which had been prepared for the tenth special session of the Commission on Narcotic Drugs.

4. The Expert Group did not meet in plenary in the afternoons of 25 and 26 January and the morning of 27 January in order to permit an informal working group to meet with full interpretation facilities to progress with work on the review of article 3. The informal working group also met during part of the mornings of 26 and 28 January and part of the afternoons of 27 and 28 January, and it held a night meeting on 26 January. The First Vice-Chairman of the session, who acted as moderator of the informal working group, reported the Group's progress to the 47th plenary meeting on 1 February. No plenary meetings were held on the afternoon of 4 February and the morning of 5 February to permit further informal consideration of textual changes with full interpretation facilities.

5. In a statement at the 53rd plenary meeting on Thursday morning, 4 February 1988, the observer from the Commission of the European Communities stated that the European Economic Community (EEC) wished that the new convention would contain a clause providing for the possibility of the participation of EEC in preparing the convention, within the limits of its competences. A detailed proposal concerning the final clauses of the Convention would be presented at a later stage.

6. In the course of its discussions at the third session, the Expert Group considered and completed its discussion of articles 3 and 4, and paragraphs 1-9 of article 5; it also reviewed parts of articles 2 and 2 *bis* in the light of its work on articles 3, 4 and 5.

7. At its 54th plenary meeting, on 5 February 1988, the Expert Group approved the revised text of articles 3 and

4, and parts of articles 2, 2 *bis* and 5, as amended by consensus or with variants indicated in square brackets when no complete agreement could be reached. It then adopted its report and instructed that the revised versions of the texts approved at the session should appear as annex II to the report.

Chapter II

REVIEW OF THE DRAFT CONVENTION

Article 3

8. The Group resumed its consideration of article 3, initiated at the second session, and decided to refer the further elaboration of the draft to an informal working group.

9. In reporting to the Group on the results of the discussions in the informal working group, the moderator of the working group indicated that the experts had taken as a basis for their consideration of the article the original draft proposed by the Secretariat, a number of texts proposed by several representatives for the redraft of the article as a whole or some specific provisions of the original draft, as well as draft proposals reflecting informal consultations at the second session on the disposition of property forfeited in the territory of other Parties. It was generally felt that the original draft of the article proposed by the Secretariat went into excessive detail and that a different structure was required to improve its clarity.

10. The moderator outlined the approach which the informal working group had taken in redrafting the article and introduced the new draft article arrived at together with additional proposals which had been placed before the informal working group but could not be discussed for lack of time. According to the new structure of the article, paragraphs 1-3 dealt with measures of confiscation and other related matters by a Party at the national level, whereas paragraphs 4-6 dealt with cases of confiscation and other related matters, implemented by one Party, upon the request of another Party in the context of international cooperation; paragraphs 7-8 had a general scope applicable to all cases of confiscation and related measures. Within each section, matters relating directly to confiscation and forfeiture were separated from other related measures such as identifying, tracing, freezing and seizure, instrumental to an eventual confiscation, as only the terms confiscation and forfeiture defined the final step of depriving traffickers of the profits of drug trafficking while the others were procedural measures to be contemplated prior to and in order to effect confiscation and forfeiture.

11. The provisions of the new article had been drafted in a flexible manner so as to facilitate their acceptability and implementation in the different domestic legal systems. This approach was preferred to the proposal by several representatives to introduce a safeguard clause to the whole article and/or to specific paragraphs regarding constitutional limitations and basic principles of the domestic legal system.

12. The moderator indicated that the words "forfeiture" and "confiscation" had been placed in square brackets as there was no agreement as to whether one or the other term should be used in the article to cover the different ways in which the measures envisaged would be defined in the different national legal systems. Consideration would also have to be given, when reformulating the set of definitions in article 1, to several terms used in the new draft, such as proceeds, property and instrumentalities. The informal working group had placed some of these terms in square brackets pending a decision as to their acceptability by the Group.

13. With regard to paragraph 1, the informal working group had agreed to state the following in the introductory sentence:

"Each party shall adopt such measures as may be necessary to enable confiscation of:

"(a) Proceeds derived from offences established in accordance with article 2, paragraph 1, or property the value of which corresponds to that of such proceeds;

"(b) Narcotic drugs and psychotropic substances used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1;

"(c) Materials and equipment used in or intended for use in the illicit production, processing or manufacture of such drugs or substances;

"(d) Other instrumentalities used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1."

The moderator pointed out that the provision of subparagraph 1(a) had been adopted by the informal working group to indicate that confiscation could be ordered for the proceeds derived from the offences established in accordance with article 2, paragraph 1, only when the Party concerned had established that these constituted offences under its domestic law. The intent of the provision was also to permit confiscation of the value of property derived from such proceeds whenever this was practicable. The moderator also indicated that the purpose of subparagraphs 1(b) and 1(c) was to cover the scope of article 37 of the Single Convention on Narcotic Drugs, 1961, dealing with seizure and confiscation, with the appropriate changes in terminology adapted to the scope of the new draft Convention.

14. The group agreed that the word "confiscation" should be retained throughout article 3 and to include in article 1 a definition that would indicate that it encompassed the concept of "forfeiture" as both terms were used in different national legal systems to refer to the same concept. It was also decided to define the term "instrumentalities" in article 1.

15. In order to highlight the objectives of the article and to make the obligations therein more explicit, one representative proposed the inclusion of an additional sentence in paragraph 1 to the effect that if the requirements for the measures to enable confiscation were satisfied under the domestic law, after appropriate review by the competent

authorities, the items mentioned in subparagraphs 1(a)-(d) should be confiscated. Several representatives considered that it would not be appropriate to include such a provision in an international convention, pointing out that since confiscation fell within the purview of the judiciary, the provision would constitute an unacceptable injunction to national courts and prejudice their sovereign rights. Some representatives proposed the inclusion of a more comprehensive safeguard clause to the effect that the provision should not only be in conformity with the domestic law but also according to the conditions established by the domestic law.

16. Taking into account the different comments and proposals, the Group agreed to insert at the beginning of paragraph 1 a new sentence to the effect that proceeds, narcotic drugs and psychotropic substances, materials and equipment, and other instrumentalities derived from or used in offences established in accordance with article 2, paragraph 1, shall be liable to confiscation, with the understanding that the words "shall be liable" were not to be interpreted as constituting a strict obligation on the part of Parties to confiscate.

17. Several representatives proposed the deletion of the words "intended for use" in subparagraphs 1(b)-(d), which the informal working group had left in square brackets, pending a final decision by the Group as to their retention or deletion. It was considered that they were superfluous as the preparatory acts to which they referred were already covered by article 2, subparagraph 1(b)(iii). Some other representatives indicated that the phrase was in conformity with the wording of article 37 of the 1961 Convention, dealing with seizure and confiscation. The Group agreed to retain the words "intended for use" on the understanding that it was up to each Party to undertake the obligations under this article in conformity with its domestic law.

18. The Group adopted paragraph 2 as proposed by the informal working group calling on each Party to adopt such measures as may be necessary to enable it to identify, trace, freeze, or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of the article, for the purpose of the eventual confiscation.

19. The Group considered paragraph 3 as drafted by the informal working group to the effect that in order to carry out the measures referred to in paragraph 2, each Party shall empower its courts or other competent authorities to order the production of bank, financial or other records.

20. Several representatives stressed the importance of including such a provision in the article in view of the practical and significant contribution it could make to the fight against illicit drug trafficking. It was pointed out that bank secrecy constituted a major impediment to the adoption of effective measures against drug trafficking and that it should not be invoked as a reason to refuse information regarding offences listed in article 2, paragraph 1. Some representatives proposed that the paragraph should be merged with paragraph 2 of which it constituted only one aspect. Some representatives pointed out that this paragraph should also apply to cases of international cooperation.

21. Some representatives indicated that the reference to "other" records was ambiguous and should be deleted. Some other representatives considered that reference to such records was important in order to have access to corporate or business records, in particular those of sham corporations which drug traffickers might have established. Some other representatives indicated that reference to the "production" of bank records was ambiguous and not practicable since certain national legislations required that such records had to be seized in order to become available for inspection. The Group agreed to delete the words "production" and "other" and to include commercial records among those that could be made available or seized. The Group approved a compromise text on the basis of the different comments and suggestions and agreed to state in a separate sentence that a Party shall not decline to act pursuant to the provisions of this article on the grounds of bank secrecy.

22. The Group examined paragraph 4 as proposed by the informal working group, dealing with confiscation following a request made by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, and in conformity with the provisions of article 5. The requested Party was put under obligation to (a) seek an order of confiscation and, if granted, give effect to such order; or (b) enforce the order of confiscation granted in the requesting State. The paragraph as drafted was left in square brackets by the informal working group as no agreement could be reached on its content, particularly concerning the modalities for the implementation of a confiscation request. There was also disagreement regarding the concluding sentence of the paragraph which stipulated that a requested Party was to give effect to the request of another Party to the same extent and under the same conditions as would be available to its own judicial authorities.

23. Several representatives considered that the scope of the paragraph was too wide and that the measures envisaged therein should be implemented at the discretion of the Parties in the context of bilateral and multilateral treaties. Some representatives, drawing attention to the innovative nature of the scheme envisaged, held the view that it should be first experienced and developed between States with similar legal systems before it could be included in an international instrument.

24. Some representatives proposed the deletion of the reference to article 5 concerning mutual legal assistance as the Group had not yet examined its provisions. The view was expressed that the field of cooperation envisaged in article 5 was of a more limited scope than the wider forms of cooperation necessary for confiscation. On the other hand, several representatives considered it necessary to retain reference in subparagraph 4(a) to the procedural requirements of paragraphs 5, 6, 7, 8 and 11 of article 5. The Group agreed to this proposal and placed such a reference in square brackets pending its consideration of article 5.

25. One representative proposed an amendment in the sense that a Party should give effect to a request for confiscation in accordance with its national legislation. It was

pointed out that this was necessary as an order of confiscation was a sanction resulting from conviction and enforceable under the domestic legal system of the requested State. Several representatives further proposed that bilateral and multilateral treaties should be mentioned in the same context. It was agreed that the new draft Convention could also constitute the basis for this form of international cooperation.

26. In view of the different proposals and comments, the Group agreed to include in the paragraph, subsequently labelled 4(c), a stipulation that Parties were to give effect to a request for confiscation on the basis of and in accordance with their domestic law, bilateral or multilateral agreements which may, at the discretion of the requested Party, include the new draft Convention.

27. Several representatives proposed that the wording of the two subparagraphs should be consistent. To that effect the Group agreed to a redraft of the second subparagraph to the effect that a Party shall submit to its competent authorities, with a view to giving effect to it, an order of confiscation issued by the requesting Party in accordance with paragraph 1, to the extent to which it relates to proceeds, property, instrumentalities or other things referred to in paragraph 1 as long as these are situated in the territory of the requested Party.

28. The Group examined a proposal to include an additional subparagraph to the effect that for the purpose of the application of the provisions of this paragraph, and provided that it is not contrary to principles of the domestic law of the requested State, all evidence provided by the requesting Party shall be admitted as evidence by the requested Party if it has been obtained in accordance with the legislation of the requesting Party. This proposal was withdrawn as its authors considered that it would become meaningless with the deletion of the last clause requested by some representatives.

29. The Group agreed to maintain paragraph 4 as amended in square brackets as there was no agreement as to its substantive content.

30. Some representatives placed on record their opinion that the provisions of the amended paragraph did not cover all the issues raised under this paragraph and that other matters such as the protection of the rights of defence, double jeopardy and concurrent jurisdiction should be considered for possible inclusion at a later stage.

31. One representative proposed the deletion of paragraph 5 as drafted by the informal working group and the inclusion of its substantive content in article 5, subparagraph 3(c) concerning execution of requests for searches and seizures. Some other representatives objected to this proposal and supported the retention of the provision in article 3 as the thrust of paragraph 5 was international cooperation to effect confiscation which was wider in scope than article 5 on mutual legal assistance.

32. In view of the close connection between the measures envisaged in paragraphs 4 and 5, the Group agreed to insert paragraph 5 in paragraph 4 as subparagraph 4(b).

The wording of the provision was brought in line with that of subparagraph 4(a) and its implementation was made subject to the conditions stipulated in subparagraph 4(c).

33. As regards paragraph 6 of the draft emanating from the informal working group concerning the disposition of property forfeited in the territory of other Parties, several representatives recalled that there was consensus at the second session on the importance and desirability of having such a provision in the article. There was agreement that the implementation of such a provision should recognize the sovereignty of the Parties, be effected through bilateral, multilateral or other agreements between the Parties concerned and that Parties should have the maximum flexibility in determining the modalities for the sharing of the seized proceeds.

34. In the opinion of several representatives, the proceeds from international illicit traffic in drugs which were, in fact, overwhelmingly concentrated in developed countries, should be utilized to finance drug control programmes in developing countries directly affected by the illicit traffic. In this connection, it was stressed that such transfers of funds would be non-mandatory in nature and that they would be supervised by and channelled through reliable and recognized international institutions, such as the United Nations Fund for Drug Abuse Control.

35. Contrary to the objections of some representatives that the Expert Group was not the appropriate forum for discussing and approving such a provision because of its political implications, and that the issue should best be referred to the Commission on Narcotic Drugs, several representatives considered that the Group could well discuss the technical aspects of the provision and propose a formulation, it being understood that the decision as to its inclusion in the draft would rest with the competent bodies at the further stages of elaboration of the draft Convention.

36. The Group began consideration of the draft emanating from the informal working group and adopted a provision stipulating that proceeds or property that have been confiscated by a Party pursuant to this article shall be disposed of by that Party according to its domestic law and administrative procedures.

37. Several representatives reiterated their objections to another proposed subparagraph in which Parties were called upon to give special consideration to concluding agreements to contribute, when acting on the request of another Party in accordance with article 3, the value, or a substantial part thereof, of the property and proceeds confiscated under paragraph 1 to international or regional organizations specializing in the fight against the illicit trafficking and abuse of narcotic drugs and psychotropic substances. The proposed text further provided that funds so contributed shall be destined to the financing of programmes, to be established jointly with Parties directly involved in these agreements and implemented in their territories, aimed at the prevention of and fight against the illicit traffic in narcotic drugs and psychotropic substances. Some other representatives objected to a second proposed provision to the effect that a Party which has confiscated

proceeds or property upon request of another Party, may elect to share, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, with other Parties, in a manner provided by its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

38. One representative proposed that some of the substantive elements of both proposals should be merged into a single subparagraph.

39. Following informal consultations, the Group agreed to a compromise draft of paragraph 5 which took into account the various comments and proposals made in the course of the discussion.

40. Divergent views were expressed regarding the words "and property", "shall" and "may" in the first sentence and the words "or property", "shall" and "may" in the second sentence of paragraph 7 which were placed in square brackets in the draft of the informal working group. The provision of that paragraph concerned proceeds and/or property which could be subject to measures referred to in the article notwithstanding that they had been intermingled with property acquired from other sources, or had been transformed or converted into other property. Income or other benefits derived from such proceeds or property were also to be subject to such measures.

41. Several representatives were of the opinion that the provision should be made mandatory and proposed the retention of the word "shall" in both instances in the paragraph. Several other representatives held the opposite view so as to take into account the diversity of legal systems. Some other representatives proposed the retention of the word "shall" in the first sentence if the reference to property was also retained and "may" in the second instance if the reference was to proceeds.

42. In view of the divergent positions the Group decided to leave the disputed words in square brackets in the agreed new paragraph 6.

43. One representative proposed that the adoption of a provision to the effect that Parties agree to take necessary measures, to the extent possible, for ensuring that, during judicial proceedings, the onus of proof regarding the legitimacy of property and assets rests on the accused trafficker.

44. Several representatives objected to this proposal in view of the fundamental importance they attached to the principle of presumption of innocence for all offences, including drug trafficking, as well as to other principles of their constitutions.

45. One representative observed that the original draft article prepared by the Secretariat included a provision to the effect that evidence establishing that, in relation to the value of the proceeds, the person, association of persons, corporation or other legal entity having no apparent legitimate source of income to justify their acquisition, should be taken into consideration and that, in his view, such a provision did not appear to infringe on human rights.

46. The Group agreed to a compromise text of a non-mandatory but exhortative character to the effect that each Party may consider ensuring that the onus of proof be reversed regarding the legitimacy of proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial proceedings.

47. Two representatives expressed their reservation to the agreed formulation.

48. The Group examined paragraph 8 of the draft article emanating from the informal working group to the effect that the provisions of article 3 should not be construed as prejudicing the rights of legitimate and/or bona fide third parties. The words "legitimate", "and", "or" and "bona fide" had been placed respectively in square brackets as no agreement had been reached in the informal working group as to which term should be used in the context of this paragraph. In order to cover the condition whereby a party, in addition to having acquired property legally should also have acquired it in good faith, it was proposed that the word "or" should be deleted and the words "legitimate and bona fide" retained with the understanding that the term "legitimate" will be defined in article 1 in conformity with the present definition contained in the original draft. It was also observed that the term "legitimate" normally applied to property but was not suitable for persons. The Group agreed to delete the word "legitimate" and to refer only to bona fide third parties.

49. The Group agreed to adopt a general safeguard clause in a final paragraph stipulating that nothing contained in article 3 should affect the principle that the measures to which it refers should be defined and implemented in conformity with and under the conditions established by the domestic law of a Party.

50. With a view to avoiding litigation by third parties that may obstruct the possibilities for Parties to seize their assets and property, one representative proposed the adoption of an additional paragraph providing that a Party requested to give effect to a confiscation order of another Party shall be bound by the findings and decisions of the latter Party with respect to the rights of third parties, except in specified circumstances. Several representatives sympathized with the objective of the provision but indicated that it raised complex problems of criminal and civil law as well as international private law. The proposal was withdrawn, but it was stated that the issue was an important one that warranted further consideration.

51. One representative proposed to delete from article 3 the paragraph concerning bona fide third parties and include instead an additional article in the convention stipulating that the provisions of article 2 as well as those of article 3 shall not be so construed as to prejudice the rights of bona fide third parties. It was argued against the proposal that the relationship between the concept of bona fide third parties and the provisions of article 2, which dealt with sanctions for offences committed intentionally, was not clear. The proposal was not adopted by the Group.

Article 4

52. The Group resumed its consideration of article 4 on the basis of the original draft, bearing in mind the comments and suggestions made in the general discussion at its second session on the article as a whole and on various specific paragraphs.

53. Several representatives proposed that paragraph 1 be amended to specify that the provisions of article 4 apply only to the serious offences established in accordance with paragraph 1 of article 2. Some representatives expressed the view that objective standards concerning the criteria for drug offences to be considered sufficiently serious to justify extradition should be indicated in the paragraph. In this connection several thresholds were suggested establishing the gravity of the offences, which varied from the deprivation of liberty for a maximum of one year to a maximum of two years. A minimum term of four months was also suggested in respect of a sentence where extradition was requested in respect of a person already convicted. Several representatives pointed out that in their respective countries double criminality was a prerequisite for extradition and that a clause reflecting this requirement should be inserted in paragraph 1. It was the common understanding of the Group that the additional paragraph 4 *bis* which was approved, and which applied to the different paragraphs of article 4, would adequately cover that concern.

54. The Group agreed not to include the word "serious" in the provisions of paragraph 1. It was pointed out that the serious nature of the offences covered in article 2, paragraph 1, was inherent in the wording of that provision which made it mandatory for each party to establish as offences under its criminal law specific acts listed therein. Several representatives indicated that article 2 had made a distinction between minor and serious offences. It was suggested by one representative that cases of a minor nature excluding extradition could be covered by inserting a clause in paragraph 5 specifying the grounds for refusal of extradition.

55. In view of the diversity of thresholds of penalties which warranted extradition, as established in the various legal systems and existing bilateral and multilateral treaties, it was agreed that no minimum or maximum limit should be set in the draft Convention as a criterion for extradition. It was argued that the establishment of a minimum threshold could constitute a bothersome precedent and provide the possibility of avoiding extradition for the serious offences under article 2, paragraph 1, should the threshold in the requested Party be lower than that in the requesting State. Several representatives objected to the consideration of the number of years of imprisonment as a determining criterion for the granting of extradition.

56. Several representatives reaffirmed their view that the objective of the draft Convention was not to establish an extradition treaty between States in the specific area of drug offences but to make extradition mandatory for all the grave offences covered in article 2, paragraph 1, on the basis of standards set by bilateral and multilateral treaties and national legislation, without making the conditions for

extradition for the above-mentioned offences different from those of other offences. In line with this approach the Group adopted an additional paragraph (paragraph 4 *bis*; paragraph 5 in the revised text) to the effect that extradition was to be subject to the conditions provided for by the laws of the requested State or by applicable extradition treaties.

57. The Group retained paragraph 1 as worded in the original draft upon agreement to replace the words "enumerated in" by the words "established in accordance with".

58. The Group agreed to retain paragraph 2 as it appeared in the original draft. It was argued in favour of its retention that the provisions would have the effect of supplementing extradition treaties already in force between Parties, particularly those based on the enumeration method where the offences under article 2, paragraph 1, may not be explicitly listed as extraditable offences. Some representatives considered that the provisions of the paragraph should apply only to future treaties and could not imply the retroactive inclusion of drug-related offences in existing bilateral treaties.

59. Several representatives considered that, in order to enhance the effectiveness of the new draft Convention and to improve upon the relevant provisions of the existing Conventions, the provisions of paragraph 3 should be drafted so as to make extradition for drug-related offences mandatory between Parties which are not bound by an extradition treaty. Accordingly the word "may" should be replaced by the word "shall". It was also argued that the amendment would have the result of placing countries that make extradition conditional on the existence of a treaty in the same position as those which do not but who, pursuant to paragraph 4, have the obligation to recognize offences to which article 4 applies as extraditable offences between themselves.

60. Several other representatives objected to this proposed amendment on the ground that it would make the provision incompatible with their constitutional and domestic legal requirements. The proposal was particularly unacceptable to States which relied on bilateral treaties to spell out the terms and conditions of extradition. It was also observed that such a mandatory formulation would have the effect of giving preferential treatment as regards extradition to drug offences as compared with other equally serious offences. A proposal to introduce a safeguard clause which would take into account the requirements of the constitution and legal system was considered inappropriate. It was pointed out that the paragraph had in fact a limited application since most States could extradite on the basis of their national legislation without requiring an extradition treaty and that in practice extradition was governed by the principle of reciprocity.

61. The Group agreed to place the words "may" and "shall" in square brackets to leave the issue open for further consideration at a later stage.

62. The Group adopted paragraph 4 as drafted in the initial text with the understanding that the concluding safeguard clause would be deleted as it was superfluous

following the adoption of an additional paragraph (paragraph 4 *bis*).

63. Several representatives proposed the deletion of the whole of paragraph 5 as it contained detailed provisions which should normally be regulated by domestic law and relevant bilateral and multilateral treaties. In their view, it was in contradiction with the approved new paragraph 4 *bis*. It was also stressed that the discretion of sovereign States to refuse extradition should not be restricted by the draft Convention. Several other representatives considered the provisions of the paragraph as essential to cope with the international aspects of drug trafficking and, in particular, to ensure that drug traffickers are brought to justice. In their view the deletion of paragraph 5 would weaken the other substantive provisions of article 4 and the draft Convention would, as a result, lose much of its impact. It was furthermore pointed out that the adoption of paragraph 4 *bis* did not preclude the possibility of providing in other paragraphs important clauses which it would be desirable to introduce in national laws and treaties governing extradition.

64. Some representatives expressed the view that subparagraph 5(a) should be deleted as its provision was contrary to their constitution, national legislation and customary legal practice. It was pointed out in that connection that in instances where States refused to grant extradition, they generally assumed a *quid pro quo* obligation to prosecute. Several other representatives stressed the importance they attached to subparagraph 5(a); in their opinion, the fight against drug traffickers would be in vain in the absence of a provision allowing for the extradition of nationals. Still other representatives said that the Convention should exhort Parties to seek to minimize legal constraints on their ability to extradite nationals.

65. Several representatives proposed that if the subparagraph was to be retained, the domestic legislation or the fundamental principles of domestic law should be mentioned in addition to the constitution of the requested Party as a justification for refusal of extradition. Some representatives proposed that whenever extradition was to be refused on these grounds, Parties should undertake to give urgent consideration to removing such obstacles.

66. Following informal consultations, a proposal was presented to the Group which included a revised formulation of the introductory sentence of paragraph 5 and a redrafting of subparagraph 5(a) dealing with the extradition of nationals.

67. As regards the proposed introductory sentence which stated in general terms the obligation for Parties to facilitate the extradition of persons accused of offences established in accordance with article 2, paragraph 1, it was agreed, in the light of a number of suggestions, to make it applicable not only to accused persons but also to convicted persons. It was also decided to specify that the request for extradition should emanate from another Party to the Convention.

68. Concerning subparagraph 5(a), one representative explained that the constitution or legal system of a State, as was the case in his own country, may not prescribe the

refusal to extradite nationals but authorize it subject to certain conditions such as, in particular, the existence of a treaty expressly allowing the extradition of nationals. With this in mind, he considered it desirable to indicate at the end of subparagraph (a) that the Convention under consideration should not be interpreted as binding on a State Party in the above described context. The Group agreed to the inclusion of a sentence leaving Parties an option to elect or decline to consider the Convention as satisfying a requirement under its constitution or domestic legal system.

69. A representative queried the relationship of subparagraph 5(a) as amended with the provisions of paragraph 4 *bis* with respect to the requirement of reciprocity in extradition matters. He was satisfied with the explanation that subparagraph 5(a) did not undermine the recognition of lack of reciprocity as a separate ground for refusal but merely dealt with another ground.

70. Several representatives requested clarification on the meaning to be attached to the expression "fundamental principles of domestic law". They wondered whether statutes or legislative acts could be considered as covered by this formula. In the negative, they favoured a reference to domestic law. It was the view of some other representatives that "fundamental principles of domestic law" should be understood as referring to principles which, although they might be found in ordinary statutes, constituted the basis of the legal system of a State. Consequently States did not have an obligation to change their legislation when a change would have an impact on such principles. Another representative argued that fundamental principles meant more than ordinary statutes and covered, for instance, situations where States did not have written constitutions; a reference to domestic law would change the meaning of the provision. It was suggested that reference to "domestic legal system" might offer a satisfactory solution. One representative expressed the view that reference to "domestic legal system" or "fundamental principles of domestic law" without specific reference to "domestic laws of the requested Party" will automatically oblige some States to extradite their nationals without the principle of reciprocity being available to them. As no agreement could be reached on this problem of interpretation, three alternative formulations (domestic law, domestic legal system, fundamental domestic law) were inserted in square brackets. One representative stated that he reserved his position on paragraph 5(a) pending instructions from his Government, but would not object to the text going forward in square brackets.

71. Several representatives proposed that subparagraph 5(b) should be amended to cover extraterritorial aspects of jurisdiction and to limit its application to the provisions of article 2 *bis*. The Group agreed to include this proposal in the subparagraph which would be placed in square brackets as no consensus was reached as to its retention.

72. Several representatives were in favour of deleting subparagraph 5(c) as its provision would violate constitutional provisions concerning the right of asylum and the systematic refusal of requests for extradition when offences are of a political nature.

73. Several representatives supported the redrafting of the subparagraph into a general declaratory statement to the effect that the offences listed in article 2, paragraph 1, should not be construed as political offences. The inclusion of fiscal offences in such a context was also suggested. Some representatives proposed that the subparagraph should be redrafted along the lines of article 3, paragraphs 1 and 2, of the European Convention on Extradition, adopted in 1957.

74. As regards paragraph 6, several representatives considered that its scope was too wide and again extended extraterritorial jurisdiction beyond the limits defined in article 2 *bis*. They accordingly supported a proposal for its amendment in order to specify that the obligation of the requested Party was not to try the person whose extradition was refused but rather to submit, without undue delay, the case to its competent authorities for the purpose of prosecution if the requesting Party so requested. Bearing in mind the standard phraseology used in other international conventions, several representatives emphasized that the provision should not determine modalities of prosecution to be followed by the authorities of the requested Party, but only the manner in which they would have to take their decision.

75. With regard to the submission of cases to the competent authorities for the purpose of prosecution, it was proposed that the paragraph should indicate that such an obligation arose irrespective of the existence of a request from the requesting State and "without exception whatsoever". In order to preclude the submission of minor offences, some representatives considered that the provision should also stipulate that only offences extraditable in the requested Party should be submitted for prosecution.

76. As a result of the trend of the discussion, several representatives introduced a new proposal for the formulation of paragraph 6. It was explained that the basic idea consisted in distinguishing between the grounds on which the requested Party refused to extradite. Firstly, if extradition was refused on grounds of territoriality or of nationality or habitual residence, the requested Party would have an obligation to submit the case for prosecution, it being understood that in the absence of a request, it would still have the right to do so. Secondly, if extradition was refused on other grounds, the requested Party would have a mere option to submit the case for prosecution. The latter provision was not considered absolutely necessary since it merely reflected the actual situation under international law.

77. The authors of this text presented, in parallel with it, a new draft of article 2 *bis*, paragraph 2, on the establishment of jurisdiction, in order to harmonize the wording of these two connected articles.

78. The proposal was supported by several representatives who considered it as offering a valuable basis for future consensus.

79. Several representatives wondered at the propriety of introducing the clause "Without prejudice to article 2 *bis*, paragraph 3". Some representatives considered that other

paragraphs of article 2 *bis* should be mentioned as well. Some other representatives observed that there was no need for safeguarding article 2 *bis* as it dealt with the establishment of jurisdiction, whereas article 4, paragraph 6, concerned the exercise of jurisdiction.

80. Several representatives asked for clarification with regard to the use of the word "jurisdiction". It was explained that it was intended to cover the cases set out in article 2 *bis*, paragraph 1(a)(i), regarding offences committed in the territory, and paragraph 1(a)(ii), relating to offences committed aboard a ship or aircraft, treated as parts of the territory.

81. Several representatives expressed concern as regards the assimilation of "habitual residence" in a territory to nationality as a ground for refusing extradition. It was explained that some countries treated habitual residents as nationals with regard to extradition; as for countries extraditing habitual residents, the provision would entail no consequences for them.

82. The requirement of a request from the requesting Party gave rise to objections from several representatives. In their view, this condition could be interpreted as affecting the sovereignty of States. The obligation to prosecute was in any case mandatory and should not be conditioned by the existence of a request from the requesting Party. Another representative expressed the view that this proposal did not affect the sovereignty of States but only the conditions of the international obligations which Parties assume under this Convention.

83. The view was expressed by one representative that the drafting of paragraph 6 should be inspired by the approach and language of recent conventions in similar matters such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984. In that perspective, that representative proposed a modified and simpler formulation of paragraph 6 which received support from several representatives.

84. The Group agreed that informal consultations should be held between the sponsors of the two proposals with a view to arriving at a common formulation. The results of these consultations appear in annex II.

85. The Group agreed to delete paragraph 7 as its provisions would impose far-reaching obligations on Parties to exercise extraterritorial jurisdiction tantamount to creating universal jurisdiction over the offences covered by the Convention. Furthermore, its provisions were superfluous in view of the provisions of article 2 *bis*. One representative considered the provision objectionable as it would make it incumbent on a Party to try an accused person simply because this person was found in its territory.

86. With a view to complementing the provisions of paragraph 6, one representative proposed the inclusion of an additional paragraph to the effect that if extradition for purposes of enforcing a sentence was refused, the requested Party upon application of the requesting Party, should consider the enforcement of the sentence, or the remainder thereof, which had been imposed under the law of the

requesting Party. It was pointed out that such a new provision would avoid conflict of jurisdiction as Parties would not be called upon to engage in a new prosecution, but to enforce foreign sanctions under their domestic law, particularly in the case of absconded criminals, in the context of international cooperation. The proposal was supported by several representatives. Some representatives, while supporting such a provision, indicated that it should be of a non-mandatory nature.

87. The Group consequently adopted an amended version of the proposal to the effect that if extradition, sought for the purpose of enforcing a sentence, is refused for any of the reasons mentioned in paragraph 6, the requested Party shall, if its laws so permit and upon application of the requesting Party, consider the enforcement of the sentence, or the remainder thereof, which has been imposed under the law of the requesting Party. The enforcement of the transferred sentence would be subject to the conditions provided for by the law of the requested Party. It was explained that the enforcement of foreign sentences, an innovative concept in the matter of extradition, could be considered as an alternative to the obligation to prosecute and as a measure which the requested and requesting Parties could revert to if they so agreed.

88. Several representatives considered that paragraph 8 should be amended to provide a more liberal standard of procedural and evidential requirements for extradition as these no longer corresponded with the present exigencies of the fight against international drug trafficking. Some representatives considered that the new Convention provided an opportunity to eliminate the *prima facie* case requirement which constituted an impediment to the effective prosecution of drug traffickers. It was proposed to amend paragraph 8 by replacing the words "of evidence providing reasonable grounds to believe" by the words "of a valid arrest warrant or of an executory judgement of the requesting State establishing". This proposal received wide support. It was suggested that a statement of the facts should also be included in the request for extradition. On the other hand, some representatives proposed that the paragraph should be deleted as it was considered inappropriate to define in an international convention what elements should be included in an extradition request as these were specified in the relevant treaties and legislation on extradition.

89. Some representatives, supporting the deletion of paragraph 8, proposed instead the insertion in paragraph 10, where Parties are invited to consider entering into bilateral and regional agreements to carry out or to enhance the effectiveness of extradition, of a clause stating that the procedural and evidentiary requirements should be minimal as well as flexible and simple in nature. Such an approach would be consistent with the requirement to apply the new standards without discrimination as to different categories of crime.

90. Following informal consultations, the Group agreed to a compromise text to the effect that Parties shall endeavour to minimize procedural and evidentiary requirements for extradition with respect to offences established in accordance with article 2, paragraph 1. To that end, a

valid arrest warrant or a final judgement of the requesting Party, together with an outline of the facts constituting the alleged offence, may be considered by Parties as sufficient to support a request for extradition. It was explained that the provision, in addition to not being mandatory, was illustrative as to some of the measures which States, desirous of relaxing evidentiary requirements, could adopt.

91. The Group agreed to delete paragraph 9 on concurrent jurisdiction as its provisions would be difficult to implement in the absence of acceptable, objective criteria to determine which Party was in a better position to prosecute. Several representatives in supporting the deletion of the paragraph indicated that such a provision was no longer necessary in view of the adoption by the Group of article 2 *bis* dealing with jurisdiction. The proposal to redraft the provision of this article along the lines of article 17 of the European Convention on Extradition was not accepted. It was again stated in this connection that the purpose of article 4 was not to establish an extradition treaty but to make extradition possible according to the conditions established in national legislation and bilateral or multilateral treaties.

92. Several representatives spoke in favour of retaining paragraph 10 which, in their view, had a useful purpose inasmuch as bilateral and multilateral treaties could cover situations which were not contemplated in article 4 as drafted. It was however suggested that the idea inherent in the paragraph should be expressed in a more synthesized way and that the last part of the sentence could be dispensed with. It was also suggested that the invitation to States to enter into agreements should be couched in a more forceful manner. The Group agreed to a rewording of the paragraph along those lines.

93. The Group considered the inclusion of an additional paragraph proposed by one representative to the effect that Parties shall consider entering into bilateral or regional agreements, whether ad hoc or general, to facilitate the transfer of persons sentenced to long-term imprisonment for offences to which article 4 applies, to their country of origin, in order that they may complete their sentences there.

94. It was explained that the transfer of convicted drug offenders, on the consent of the prisoner and subject to the agreement of the State of nationality, which was a newly developed technique of cooperation in criminal law, would facilitate the implementation of article 4. It was argued that States would consider more favourably the extradition of nationals for the purpose of prosecution if there was a guarantee that the sentence would be served in the State of nationality. This argument was also suggested as the reason for including this new paragraph in article 4 rather than elsewhere in the draft Convention. Some representatives, in supporting the proposal, indicated that it was in line with the European Convention on the Transfer of Sentenced Persons, adopted in 1983, and the recommendation adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

95. The Group adopted the proposal on the understanding that it would refer to multilateral rather than regional

treaties and that no reference would be made to the duration of the sentence as this was considered to be an issue that should be left to the applicable treaties.

Article 5

96. The Group began consideration of article 5 by a general discussion during which comments were made on the structure and substance of the article as a whole as well as on specific paragraphs.

97. The Group recognized that article 5 was of fundamental importance inasmuch as the effective implementation of the provisions of the new convention was dependent on international cooperation.

98. Several representatives held the view that the provisions of the article should be sufficiently detailed to serve as guidelines for those Governments that might not be familiar with the concept of mutual legal assistance, or were not Parties to bilateral or other treaties in this field. Such provisions would also facilitate mutual judicial assistance for those States which require the existence of a treaty obligation to give effect to such assistance.

99. Several other representatives did not share that approach. In their opinion, detailed provisions would give rise to problems of implementation in the respective States Parties because of the difference in their legal systems and practices. The article should therefore be redrafted in less constricting language and limit itself to laying down the principle of international cooperation in this field without establishing a specific mechanism of mutual judicial assistance. In this regard one representative proposed that the article should be reformulated along the lines of article 10 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and of article 11 of the International Convention against the Taking of Hostages.

100. It was pointed out by several representatives that there was no need to include in article 5 a full set of regulations applicable specifically to drug offences since, for a number of States, the whole ambit of mutual legal assistance was already covered by a network of bilateral and other treaties to which they were Parties. In order not to jeopardize the operation of such instruments, it should be made clear that the provisions of article 5 should apply only if the two Parties concerned were not bound by any other treaty of mutual legal assistance or, when such a treaty existed, only if it did not provide differently.

101. Some representatives suggested that the limitation clause in the introductory sentence of paragraph 1 should be deleted as such restricting language would have the undesirable effect of weakening the provisions of the article. Some other representatives were of the view that if the provisions of the article were to be spelt out in detail, they should be subject to a similar limitation clause as had been agreed to in articles 7 and 14 so as to take into account the different national legal systems.

102. Several representatives expressed the view that the reference to "other judicial proceedings", in paragraph 1, could be susceptible to broad interpretation implying the

inclusion of administrative proceedings which fell outside the scope of the article. It was considered that a clear distinction should be established between the field of judicial assistance envisaged under this article and other fields of cooperation such as those covered under article 6.

103. Several representatives objected to the detailed enumeration of the modalities of judicial assistance in subparagraphs 3(a)-(g) and expressed the view that the paragraph should be redrafted in a more concise general manner. One representative proposed that the phrase "but not necessarily be limited to" in the introductory sentence of paragraph 3 should be deleted and replaced by a new additional subparagraph referring to "any other forms of assistance not prohibited by the laws of the requested State". Some representatives considered that the provisions of subparagraph 3(g) were out of place in an international convention and that issues touching upon such sensitive matters as bank secrecy should better be tackled within the realm of domestic jurisdiction.

104. One representative proposed that the transfer of proceedings in subparagraph 4(a) should be dealt with in a separate article. In order to make it clear that the provisions of subparagraph 4(b) covered only the transfer of persons in custody for evidentiary purposes and not for the execution of sanctions, it was proposed that the temporary character of the transfer should be specified. One representative, stressing the importance of assistance to prosecution, suggested that the article should be redrafted so as to encourage Parties to enter into arrangements enabling persons in their territory to give evidence in other States Parties.

105. One representative disputed the need for paragraphs 5-7 for the reason that mutual assistance in criminal proceedings was currently undertaken in a satisfactory manner through diplomatic channels, while cooperation in the field of investigation was operative through the agencies directly concerned and through the ICPO/Interpol. One representative proposed that the provisions of these paragraphs should be amended to conform with current practice in matters of mutual judicial assistance, which does not contemplate any central authority for the execution of requests. The requests should be conveyed through the Ministry of Justice or through diplomatic channels, direct administrative channels being permitted only in cases of extreme urgency. The desirability of instituting a focal point for communication was however emphasized in the interest of efficiency. One representative indicated that the provisions of article 17 of the 1961 Convention and article 6 of the Convention on Psychotropic Substances, 1971, concerning the establishment of a special administration should be taken into consideration in redrafting the provisions of the above paragraphs.

106. As regards the cases envisaged in paragraph 11 where mutual legal assistance may be refused, it was the view of one representative that the matter of refusal should be left aside and settled as appropriate on the basis of relevant treaties or domestic law.

107. One representative proposed that in order to cover the problem of compatibility with existing treaties,

paragraph 13 should be redrafted along the lines of article 11, paragraph 2, of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted in 1971.

108. During the course of the consideration of article 5 on a paragraph-by-paragraph basis, several representatives indicated their preference for the deletion of the word "legal" in the title and substantive provisions of article 5. They felt it was too restrictive and did not accurately reflect the entire range of cooperation envisaged in the article which included non-judicial assistance. Some other representatives, arguing in favour of the inclusion of the word, stated that assistance under the article should be purely legal and exclude assistance of an administrative nature. Reference was made in this connection to the other forms of cooperation covered in article 6. It was suggested that it would be advisable to defer the decision on the title until the content of the article had been elaborated.

109. Some representatives suggested that the safeguard clause in paragraph 1 of article 5 be deleted as it was obvious from the text of the article that the provisions would be exercised within the context of the constitutional, legal and administrative systems of Parties. Several representatives, however, felt that the safeguard clause should be retained as it would facilitate the adoption of the other substantive paragraphs. It was suggested that it might be more appropriate to include such a clause at the end of the article.

110. There was general agreement on the suggestion that the words "upon request" be deleted from the paragraph as it was implicit that all assistance rendered would be on the basis of a request from another Party.

111. There was also agreement to state that the offences to which the paragraph applied were those "established" in paragraph 1 of article 2 so as to be consistent with the formulation adopted in the other relevant provisions.

112. It was suggested that in order to reflect the principle of double criminality, the paragraph should be amended to specify that the offences in question had to be established by both requesting and requested Parties. It was, however, noted by one representative that if it was found necessary to reflect the principle of double criminality in the Convention, provision should be made to permit assistance to be provided by Parties on a discretionary basis even if double criminality did not exist in a given case.

113. The propriety of the formula "other judicial proceedings", as used in the paragraph, gave rise to certain doubts on the part of some representatives. It was suggested that it should be understood in a broad sense as covering a wide range of actions aimed at enhancing the efficacy of proceedings.

114. The informal working group continued consideration of this article and the outcome of its discussions is reflected in the text in annex II.

[. . .]

ANNEX II

Article 2, new penultimate paragraph

[For the purpose of cooperation between Parties under this Convention, [including, in particular, cooperation under articles 3, 4, 5 and 6], offences established in accordance with this article shall not be considered as [political or fiscal offences] [offences political or fiscal in character] [or regarded as politically motivated] [unless the requested Party has substantial grounds for believing that such cooperation may lead to or assist in prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons].]

*Article 2 bis, paragraph 2**

Each Party:

(a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground that the offence has been committed:

- (i) In its territory or on board a ship or aircraft which was registered under its laws at the time the offence was committed, or
- (ii) By a national or by a person who has his habitual residence in its territory;

(b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on any other ground than those specified in subparagraph (a) above.

Article 3

1. Proceeds, narcotic drugs and psychotropic substances, materials and equipment, and other instrumentalities derived from or used in offences established in accordance with article 2, paragraph 1, shall be liable to confiscation. To that end, each Party shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences established in accordance with article 2, paragraph 1, or property the value of which corresponds to that of such proceeds;

(b) Narcotic drugs and psychotropic substances used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1;

(c) Materials and equipment used in or intended for use in the illicit production, processing or manufacture of such drugs or substances;

(d) Other instrumentalities used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1.

2. Each Party shall also adopt such measures as may be necessary to enable it to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of the eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, and in conformity with the provisions of paragraphs [5, 6, 7, 8 and 11] of article 5, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

- (i) Seek an order of confiscation from its competent authorities and, if such an order is granted, give effect to it; or
- (ii) Submit to its competent authorities, with a view to giving effect to it, an order of confiscation issued by the requesting Party in accordance with paragraph 1, to the extent to which it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party;

(b) Following a request made by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, and in conformity with paragraphs [5, 6, 7, 8 and 11] of article 5, the requested Party shall take measures to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of an eventual confiscation to be ordered either in the requesting Party or, pursuant to a request under section (a), in the requested Party;

(c) The requested Party shall give effect to the request on the basis of and in accordance with its domestic law or bilateral or multilateral agreements, which may, at the discretion of the requested Party, include the present Convention.]

5. (a) Proceeds or property that have been confiscated by a Party pursuant to this article shall be disposed of by that Party according to its law and administrative procedures;

(b) When acting on the request of another Party in accordance with this article, the Parties may give special consideration to concluding agreements on:

- (i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to inter-governmental bodies specializing in the fight against the illicit traffic in and abuse of narcotic drugs and psychotropic substances;
- (ii) Sharing, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, with other Parties, in a manner provided by its law, administrative procedure or bilateral or multilateral agreements entered into for this purpose.

6. Proceeds [and property] [shall] [may] be subject to measures referred to in this article notwithstanding that they have been intermingled with property acquired from other sources, or have been transformed or converted into other property. Income or other benefits derived from such proceeds [or property] [shall] [may] also be subject to such measures.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the legitimacy of proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial proceedings.

*The revised draft text of article 2 bis, paragraph 2, was agreed to on a provisional basis with respect to both structure and substance, but it was recognized that it still required extensive review.

8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in conformity with and under the conditions established by the domestic law of a Party.

Article 4

1. This article shall apply to the offences established in accordance with paragraph 1 of article 2 of this Convention.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it [may] [at its option] [shall] consider this Convention as the legal basis for extradition in respect of any offence to which this article applies.

4. Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties.

6. [For the purpose of cooperation between Parties under this Convention, [including, in particular, cooperation under articles 3, 4, 5 and 6], offences established in accordance with this article shall not be considered as [political or fiscal offences] [offences political or fiscal in character] [or regarded as politically motivated] [unless the requested Party has substantial grounds for believing that such cooperation may lead to or assist in prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons].]*

7. Parties shall facilitate the extradition of persons accused or convicted of offences established in accordance with article 2, paragraph 1. To this end, a request for extradition by another Party with respect to any of the offences to which this article applies shall not be refused on the ground that the person sought is a national of, or has his habitual residence in the territory of, the requested Party, except in cases where refusal is required by the constitution or the [domestic legal system] [fundamental domestic law] [domestic law] of the requested Party. A Party may elect or decline to consider this convention as satisfying a requirement under its constitution or [domestic legal system] [fundamental domestic law] [domestic law] that extradition of nationals, or of persons having their habitual residence in its territory, be subject to the existence of a treaty.**

8. (a) Without prejudice to the exercise of any other jurisdiction established in accordance with article 2 *bis*, the Party in whose territory the alleged offender is present:

- (i) Shall, if it does not extradite him [to another Party] and if the offence is one in respect of which the requested Party has jurisdiction by virtue of article 2 *bis*, subparagraph 2(a), [at the request of the requesting Party] submit the case without undue delay to its competent authorities for the purpose of prosecution;
- (ii) May, if it does not extradite him and if the offence is one in respect of which the requested Party has jurisdiction by virtue of article 2 *bis*, subparagraph 2(b), submit the case to its competent authorities for the purpose of prosecution;

(b) The competent authorities referred to in subparagraph (a) above shall take their decision in the same manner as in the case of any offence of a similar nature under the law of the requested Party.*

9. If extradition, sought for purposes of enforcing a sentence, is refused on any of the grounds mentioned in paragraph [7], the requested Party shall, if its law so permits and upon application of the requesting Party, consider the enforcement of the sentence, or the remainder thereof, which has been imposed under the law of the requesting Party. The enforcement of the sentence thus transferred, shall be subject to the other conditions provided for by the law of the requested Party.

10. Parties shall endeavour to minimize procedural and evidentiary requirements for extradition with respect to offences established in accordance with article 2, paragraph 1. To that end, a valid arrest warrant or a final judgement of the requesting Party, together with an outline of the facts constituting the alleged offence, may be considered by Parties as sufficient to support a request for extradition.

11. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

12. The Parties shall consider entering into bilateral or multilateral agreements, whether ad hoc or general, to facilitate the transfer of persons sentenced to imprisonment for offences to which this article applies, to their country of origin, in order that they may complete their sentences there.

Article 5

[MUTUAL [LEGAL] ASSISTANCE]

1. [Having due regard to their constitutional, legal and administrative systems as well as relevant treaties or arrangements,] the Parties shall afford one another the widest measure of mutual legal assistance[, subject to the conditions provided for by the laws of the requested Party,] in all investigations, prosecutions [and other [judicial] [criminal] [proceedings] relating to offences established in accordance with article 2, paragraph 1, [by both the requesting and the requested Parties,] [which fall within the jurisdiction of the requesting Party,] [The law of the requested Party shall apply.]

(Note: reference to "[by both the requesting and the requested Parties]" can be deleted if the idea is included in paragraph 9 or paragraph 11.)

2. The Parties undertake to adopt legislative and administrative measures as may be necessary within their domestic legal

*Paragraph to be reconsidered in the context of article 2.

**Subparagraphs (b) and (c) of the former paragraph 5 (contained in working paper DND/DCIT/WP.36) were deleted, leaving a shortened renumbered paragraph 7. One expert formally objected to deletion of subparagraph (b).

*The revised draft text of paragraph 8 was agreed to on a provisional basis with respect to both structure and substance, but it was recognized that it still required extensive review.

systems to ensure that effective assistance as envisaged in this article may be rendered to other Parties at their request.

3. [Mutual legal assistance shall include, [but not necessarily be limited to]:] [Mutual legal assistance shall be granted for evidentiary purposes and it may include:]

- (a) Taking evidence[; and the statement of persons];
- (b) Effecting service of judicial documents;
- (c) Executing requests for searches and seizures[; of property];

[(d) Examining objects and sites;]

[(e) Locating or identifying witnesses[, suspects or other persons];]

[(f) Exchanging information and objects;]

[(g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate and business records;]

[(h) Identifying, tracing, freezing and seizing proceeds or property derived from or used in the offences established in accordance with article 2, paragraph 1;]

[(i) Any other forms of assistance [allowed] [not prohibited] by the domestic law of the requested Party;]

[(j) Making persons, including persons in custody, available to give evidence or assist in investigations.]

Proposal: delete paragraph 3.

Proposal: delete at least (d), (e), (f) and (h) of paragraph 3.

Proposal: delete paragraph 3 but incorporate (g) and (i) into paragraph 1.

Proposal: divide paragraph 3 into two subparagraphs in the following manner:

- 3 (i) Mutual legal assistance shall include: (a) to (h);
- (ii) Mutual legal assistance may also include: (i) to (j).

4. The Parties shall give favourable consideration to the possibility of:

(a) Transferring to one another proceedings for criminal prosecution in cases where such transfer may help to ensure that all persons who commit offences punishable under this Convention are brought to justice;

Proposal: reword (a) as follows:

“(a) Transferring to one another proceedings for criminal prosecution of offences enumerated in article 2, paragraph 1, of this Convention in cases where such transfer is to be considered in the interest of a proper administration of justice.

“(b) [Temporarily] transferring for testimonial purposes persons in custody whose evidence is material to a prosecution or other judicial proceeding [and ensuring their safe conduct].

“(c) Entering into agreements or arrangements to facilitate or compel the attendance of other persons resident in their territory to give evidence at prosecutions or other judicial proceedings in the territory of other Parties.]”

Proposal: delete paragraph 4 and transfer (b) to paragraph 3. (Note: see also new (j) in paragraph 3.)

Proposal: insert new paragraph 5 reading as follows and renumber as appropriate:

5. Paragraphs 6 to 13* shall apply only if the Parties are not bound by any treaty of mutual legal assistance or if such treaty exists but does not provide for different rules.

[5. [Each Party shall designate [an appropriate] [a central] authority] [Competent authorities shall be designated by each Party] to facilitate or execute requests for mutual legal assistance. [The authority] [The authorities] designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties.]

Proposal: delete paragraphs 5 and 6.

Proposal: delete paragraphs 5, 6 and 7.

Proposal: delete paragraphs 5, 6, 7 and 8.

Proposal: redraft article 5 as suggested in paragraph 490 of DND/DCIT/WP.1.

Proposal: redraft paragraph 5 as in paragraphs 5 and 7 of article 5 in DND/DCIT/WP.44.

[6. The designated authorities may communicate [directly with each other] [through established diplomatic channels] for the execution of requests made under the provisions of this article.]

[7. Requests for mutual legal assistance shall be made in writing [in a language acceptable to the requested Party. In emergency situations, a request may be made orally, to be followed as soon as possible thereafter by a written request.]]

[8. Requests for mutual legal assistance shall contain:

- (a) The title of the authority making the request;
- (b) The object of, and the reason for, the request;

(c) [Except for requests for the service of documents,] [if necessary] a statement of facts [alleged or sought to be ascertained];

[(d) An outline of any procedural requirements essential to the requesting Party;]

(e) [A precise description of the assistance requested;]

(f) Such other information or documents as the requested Party may require].

9. A request shall be executed in accordance with the law of the requested Party and, to the extent [not precluded] [permitted] by the law of the requested Party, in accordance with the procedural requirements specified in the request [, where possible].

[...]

*Old paragraphs 5-12.

Conference documents on organizational matters

DOCUMENT E/CONF.82/6

Agenda

[Original: English]
[25 November 1988]

1. Opening of the Conference.
2. Election of the President.
3. Organization and procedural matters:
 - (a) Adoption of the rules of procedure;
 - (b) Adoption of the agenda;
 - (c) Election of officers other than the President;
 - (d) Credentials of delegations to the Conference:
 - (i) Appointment of the Credentials Committee;
 - (ii) Report of the Credentials Committee;
 - (e) Appointment of members of the Drafting Committee;
 - (f) Establishment of the Committees of the Whole;
 - (g) Organization of work;
 - (h) Appointment of other committees, subcommittees or working groups;
4. Consideration of a draft convention against illicit traffic in narcotic drugs and psychotropic substances.
5. Adoption of the Convention and of the final act of the Conference.
6. Signature of the final act and of the Convention.

DOCUMENT E/CONF.82/7

Rules of procedure

[Original: English]
[25 November 1988]

I. REPRESENTATION AND CREDENTIALS

other representatives, alternate representatives and advisers
as may be required.

Composition of delegations

Alternates and advisers

Rule 1

The delegation of each State participating in the Conference shall consist of a head of delegation and such

Rule 2

The head of delegation may designate an alternate representative or an adviser to act as a representative.

Credentials

Rule 3

The credentials of heads of delegations and the names of alternate representatives and advisers shall be submitted early to the Executive Secretary of the Conference and if possible not later than 24 hours after the opening of the Conference. Any subsequent change in the composition of delegations shall also be submitted to the Executive Secretary. The credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs.

Credentials Committee

Rule 4

A Credentials Committee of nine members shall be appointed at the beginning of the Conference. Its composition shall be based on that of the Credentials Committee of the General Assembly of the United Nations at its forty-third session. It shall examine the credentials of delegations and report to the Conference without delay.

Provisional participation in the Conference

Rule 5

Pending a decision of the Conference upon their credentials, delegations shall be entitled to participate provisionally in the Conference.

II. OFFICERS

Elections

Rule 6

The Conference shall elect from among the representatives of participating States the following officers: a President and 24 Vice-Presidents and a Rapporteur-General, as well as the Chairmen of the Committees of the Whole provided for in rule 48 and the Chairman of the Drafting Committee provided for in rule 49. These officers shall be elected on the basis of ensuring the representative character of the General Committee. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

General powers of the President

Rule 7

1. In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, promote general agreement, inform the General Committee on efforts to reach general agreement, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to these

rules, shall have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting.

2. The President, in the exercise of his functions, remains under the authority of the Conference.

Acting President

Rule 8

1. If the President finds it necessary to be absent from a meeting or any part thereof, he shall designate a Vice-President to take his place.

2. A Vice-President acting as President shall have the powers and duties of the President.

Replacement of the President

Rule 9

If the President is unable to perform his functions, a new President shall be elected.

The President shall not vote

Rule 10

The President, or a Vice-President acting as President, shall not vote in the Conference, but shall designate another member of his delegation to vote in his place.

III. GENERAL COMMITTEE

Composition

Rule 11

There shall be a General Committee consisting of 29 members, which shall comprise the President, Vice-Presidents and Rapporteur-General of the Conference, the Chairmen of the Committees of the Whole and the Chairman of the Drafting Committee. The President of the Conference, or in his absence, one of the Vice-Presidents designated by him, shall serve as Chairman of the General Committee.

Substitute members

Rule 12

If the President or a Vice-President of the Conference is to be absent during a meeting of the General Committee, he may designate a member of his delegation to sit and vote in the Committee. In case of absence, the Chairman of a Committee of the Whole shall designate the Vice-Chairman of that Committee as his substitute, and the Chairman of the Drafting Committee shall designate a

member of the Drafting Committee. When serving on the General Committee, the Vice-Chairman of a Committee of the Whole or member of the Drafting Committee shall not have the right to vote if he is of the same delegation as another member of the General Committee.

Functions

Rule 13

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the coordination of its work.

IV. SECRETARIAT

Duties of the Secretary-General

Rule 14

1. The Secretary-General of the United Nations shall be the Secretary-General of the Conference. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

Duties of the secretariat

Rule 15

The secretariat of the Conference shall, in accordance with these rules:

- (a) Interpret speeches made at meetings;
- (b) Receive, translate, reproduce and distribute the documents of the Conference;
- (c) Publish and circulate the official documents of the Conference;
- (d) Prepare and circulate records of public meetings;
- (e) Make and arrange for the keeping of sound recordings of meetings;
- (f) Arrange for the custody and preservation of the documents of the Conference in the archives of the United Nations; and
- (g) Generally perform all other work that the Conference may require.

Statements by the secretariat

Rule 16

In the exercise of the duties referred to in rules 14 and 15, the Secretary-General or any other member of the staff designated for that purpose may, at any time, make either oral or written statements concerning any question under consideration.

V. OPENING OF THE CONFERENCE

Temporary President

Rule 17

The Secretary-General of the United Nations or, in his absence, his representative, shall open the first meeting of the Conference and preside until the Conference has elected its President.

Decisions concerning organization

Rule 18

1. On the basis of recommendations submitted by the Review Group, and those emerging from any pre-Conference consultations, the Conference shall, to the extent possible, at its first meeting:

- (a) Adopt its rules of procedure;
- (b) Elect its officers and constitute its subsidiary organs;
- (c) Adopt its agenda, the draft of which shall, until such adoption, be the provisional agenda of the Conference;
- (d) Decide on the organization of its work.

2. Recommendations relating to matters set out in paragraph 1, subparagraphs (a) to (d) above, submitted by the Review Group and those resulting from pre-Conference consultations shall, unless the Conference specifically decides otherwise, be acted on without further discussion.

VI. CONDUCT OF BUSINESS

Quorum

Rule 19

The President may declare a meeting open and permit the debate to proceed when representatives of at least one third of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

Speeches

Rule 20

1. No one may address the Conference without having previously obtained the permission of the President. Subject to rules 21, 22, 25 and 27, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

2. The Conference may limit the time allowed to each speaker and the number of times each representative may speak on a question. Before a decision is taken, two

representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a speaker exceeds the allotted time, the President shall call him to order without delay.

Precedence

Rule 21

The chairman or rapporteur of a committee, or the representative of a subcommittee or working group, may be accorded precedence for the purpose of explaining the conclusions arrived at by his committee, subcommittee or working group.

Points of order

Rule 22

During the discussion of any matter, a representative may at any time raise a point of order, which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately, and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

Closing of list of speakers

Rule 23

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed.

Right of reply

Rule 24

1. Notwithstanding rule 23, the President shall accord the right of reply to a representative of any State participating in the Conference who requests it. Any other representative may be granted the opportunity to make a reply.

2. Replies made pursuant to the present rule shall be made at the end of the last meeting of the day, or at the conclusion of the consideration of the relevant issue if that is sooner.

3. The number of interventions in reply for any delegation at a given meeting should be limited to two per issue.

4. The first intervention in reply, for any delegation on any issue at a given meeting, shall be limited to five minutes and the second intervention shall be limited to three minutes.

Adjournment of debate

Rule 25

A representative may at any time move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion permission to speak

on the motion shall be accorded only to two representatives in favour and to two opposing the adjournment, after which the motion shall, subject to rule 28, be immediately put to the vote.

Closure of debate

Rule 26

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his/her wish to speak. Permission to speak on the motion shall be accorded only to two representatives opposing the closure, after which the motion shall, subject to rule 28, be immediately put to the vote.

Suspension or adjournment of the meeting

Rule 27

Subject to rule 40, a representative may at any time move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted and they shall, subject to rule 28, be immediately put to the vote.

Order of motions

Rule 28

The motions indicated below shall have precedence in the following order over all proposals or other motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the question under discussion;
- (d) To close the debate on the question under discussion.

Basic proposal

Rule 29

The draft articles of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, submitted by the Commission on Narcotic Drugs at its tenth special session and those submitted as part of its report by the Review Group, shall constitute the basic proposal for consideration by the Conference.

Other proposals and amendments

Rule 30

Other proposals and amendments shall normally be submitted in writing to the Executive Secretary of the Conference, who shall circulate copies to all delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of

amendments, even though these amendments have not been circulated or have only been circulated the same day.

Decisions on competence

Rule 31

Subject to rule 22, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal submitted to it shall be put to the vote before the matter is discussed or a decision is taken on the proposal in question.

Withdrawal of proposals and motions

Rule 32

A proposal or a motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that it has not been amended. A proposal or a motion that has thus been withdrawn may be reintroduced by any representative.

Reconsideration of proposals

Rule 33

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

Invitations to technical advisers

Rule 34

The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

VII. DECISION-MAKING

General agreement

Rule 35

1. The Conference shall make its best endeavours to ensure that the work of the Conference is accomplished by general agreement.

2. If, in the consideration of any matter of substance, all efforts have been made and no agreement appears to be attainable, the President of the Conference shall inform the General Committee that efforts to reach general agreement have failed. The General Committee shall there upon consider the matter and recommend the steps to be taken.

Voting rights

Rule 36

Each State participating in the Conference shall have one vote.

Majority required

Rule 37

1. Subject to rule 35, decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Except as otherwise provided in these rules, decisions of the Conference on all matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall be put to the vote immediately, and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

4. If a vote is equally divided, the proposal or motion shall be regarded as rejected.

Meaning of the phrase "representatives present and voting"

Rule 38

For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Method of voting

Rule 39

1. Except as provided in rule 46, the Conference shall normally vote by show of hands, except that a representative may request a roll-call, which shall then be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President. The name of each State shall be called in all roll-calls and its representative shall reply "yes", "no" or "abstention".

2. When the Conference votes by mechanical means, a non-recorded vote shall replace a vote by show of hands and a recorded vote shall replace a roll-call. A representative may request a recorded vote, which shall, unless a representative requests otherwise, be taken without calling out the names of the States participating in the Conference.

3. The vote of each State participating in a roll-call or a recorded vote shall be inserted in any record of or report on the meeting.

Conduct during voting

Rule 40

After the President has announced the commencement of voting, no representative shall interrupt the voting

except on a point of order in connection with the process of voting.

Explanation of vote

Rule 41

Representatives may make brief statements consisting solely of explanations of vote, before the voting has commenced or after the voting has been completed. The President may limit the time to be allowed for such explanations. The representative of a State sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended.

Division of proposals

Rule 42

A representative may move that parts of a proposal be voted on separately. If a representative objects, the motion for division shall be voted upon. Permission to speak on the motion shall be accorded only to two representatives in favour and two opposing the division. If the motion is carried, those parts of the proposal that are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Amendments

Rule 43

A proposal is considered an amendment to another proposal if it merely adds to, deletes from or revises part of that proposal. Unless specified otherwise, the word "proposal" in these rules shall be considered as including amendments.

Order of voting on amendments

Rule 44

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall vote first on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

Order of voting on proposals

Rule 45

1. If two or more proposals, other than amendments, relate to the same question, they shall, unless the Conference decides otherwise, be voted on in the order in which they were submitted. The Conference may, after

each vote on a proposal, decide whether to vote on the next proposal.

2. Revised proposals shall be voted on in the order in which the original proposals were submitted, unless the revision substantially departs from the original proposal. In that case the original proposal shall be considered as withdrawn and the revised proposal shall be treated as a new proposal.

3. A motion requiring that no decision be taken on a proposal shall be put to the vote before a vote is taken on the proposal in question.

Elections

Rule 46

All elections shall be held by secret ballot unless, in the absence of any objection, the Conference decides to proceed without taking a ballot when there is an agreed candidate or slate.

Rule 47

1. When one or more elective places are to be filled at one time under the same conditions, those candidates, in a number not exceeding the number of such places, obtaining in the first ballot a majority of the votes cast and the largest number of votes shall be elected.

2. If the number of candidates obtaining such a majority is less than the number of places to be filled, additional ballots shall be held to fill the remaining places.

VIII. COMMITTEES

Committees of the Whole

Rule 48

The Conference shall establish two Committees of the Whole, which may set up subcommittees or working groups. Each Committee of the Whole shall have as its officers a Chairman, a Vice-Chairman and a Rapporteur.

Drafting Committee

Rule 49

1. The Conference shall establish a Drafting Committee consisting of 15 members, including its Chairman who shall be elected by the Conference in accordance with rule 6. The other 14 members of the Committee shall be appointed by the Conference on the proposal of the General Committee. The Rapporteurs of the Committees of the Whole participate ex officio, without a vote, in the work of the Drafting Committee.

2. The Drafting Committee shall consider draft articles referred to it by the Committee of the Whole. The Drafting Committee shall furthermore prepare drafts and give advice on drafting as requested by the Conference or by the Committee of the Whole. It shall coordinate and

review the drafting of all texts adopted, and shall report, as appropriate, either to the Conference or to a Committee of the Whole.

Officers

Rule 50

Except as otherwise provided in rule 6, each committee, subcommittee and working group shall elect its own officers.

Quorum

Rule 51

1. The Chairman of a Committee of the Whole may declare a meeting open and permit the debate to proceed when representatives of at least one quarter of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

2. A majority of the representatives of the General, Drafting or Credentials Committee or of any committee, subcommittee or working group shall constitute a quorum.

Officers, conduct of business and voting

Rule 52

The rules contained in chapters II, VI (except rule 19) and VII above shall be applicable, *mutatis mutandis*, to the proceedings of committees, subcommittees and working groups, except that:

(a) The Chairmen of the General, Drafting and Credentials Committees and the chairmen of committees, subcommittees and working groups may exercise the right to vote, and

(b) Decisions of committees, subcommittees and working groups shall be taken by a majority of the representatives present and voting, except that the reconsideration of a proposal or an amendment shall require the majority established by rule 33.

Other committees

Rule 53

1. In addition to the committees referred to above, the Conference may establish such committees and working groups as it deems necessary for the performance of its functions.

2. Each committee may set up subcommittees and working groups.

Rule 54

1. The members of the committees and working groups of the Conference, referred to in rule 53, paragraph 1, shall be appointed by the President, subject to the approval of the Conference, unless the Conference decides otherwise.

2. Members of subcommittees and working groups of committees shall be appointed by the Chairman of the committee in question, subject to the approval of that committee, unless the committee decides otherwise.

IX. LANGUAGES AND RECORDS

Languages of the Conference

Rule 55

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

Interpretation

Rule 56

1. Speeches made in a language of the Conference shall be interpreted into the other such languages.

2. A representative may speak in a language other than a language of the Conference if the delegation concerned provides for interpretation into one such language.

Records and sound recordings of meetings

Rule 57

1. Summary records of the plenary meetings of the Conference and of the meetings of the Committees of the Whole shall be kept in the languages of the Conference. As a general rule, they shall be circulated as soon as possible, simultaneously in all the languages of the Conference, to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

2. The Secretariat shall make sound recordings of meetings of the Conference, the Committees of the Whole and the Drafting Committee. Such recordings shall be made of meetings of other committees, subcommittees or working groups when the body concerned so decides.

Languages of official documents

Rule 58

Official documents shall be made available in the languages of the Conference.

X. PUBLIC AND PRIVATE MEETINGS

Plenary meetings and meetings of the Committees of the Whole

Rule 59

The plenary meetings of the Conference and meetings of the Committees of the Whole shall be held in public unless the body concerned decides otherwise. All decisions

taken by the plenary of the Conference at a private meeting shall be announced at an early public meeting of the plenary.

Other meetings

Rule 60

As a general rule meetings of the General Committee, the Drafting Committee, subcommittees or working groups shall be held in private.

Communiqués on private meetings

Rule 61

At the close of a private meeting, the President of the Conference may issue a communiqué to the press through the Executive Secretary.

XI. OTHER PARTICIPANTS AND OBSERVERS

Namibia, represented by the United Nations Council for Namibia

Rule 62

Namibia, represented by the United Nations Council for Namibia, may participate in the deliberations of the Conference, the Committees of the Whole and, as appropriate, other committees, subcommittees or working groups, in accordance with the relevant resolutions and decision of the General Assembly.

Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observers

Rule 63

Representatives designated by organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under the auspices of the General Assembly have the right to participate as observers, without the right to vote, in the deliberations of the Conference, the Committees of the Whole and, as appropriate, other committees, subcommittees or working groups.

Representatives of national liberation movements

Rule 64

Representatives of national liberation movements invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, the Committees of the Whole and, as appropriate, other committees, subcommittees or working groups on any matter of particular concern to those movements.

*Representatives of the specialized agencies**

Rule 65

Representatives designated by the specialized agencies** may participate, without the right to vote, in the deliberations of the Conference, the Committees of the Whole and, as appropriate, other committees, subcommittees or working groups on questions within the scope of their activities.

Representatives of other intergovernmental organizations

Rule 66

Representatives designated by other intergovernmental organizations** invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, the Committees of the Whole and, as appropriate, other committees, subcommittees or working groups on questions within the scope of their activities.

Representatives of interested United Nations organs and of the International Narcotics Control Board

Rule 67

Representatives designated by interested organs of the United Nations and by the International Narcotics Control Board** may participate as observers, without the right to vote, in the deliberations of the Conference, its Committees of the Whole and, as appropriate, other committees, subcommittees or working groups on questions within the scope of their activities.

Observers for non-governmental organizations

Rule 68

1. Non-governmental organizations invited to the Conference may designate representatives to sit as observers at public meetings of the Conference and the Committees of the Whole.

2. Upon the invitation of the presiding officer of the conference body concerned and subject to the approval of that body, such observers may make oral statements on questions in which they have special competence.

Written statements

Rule 69

Written statements submitted by the designated representatives referred to in rules 63 to 68 shall be distributed by the Secretariat to all delegations in the quantities and in the language in which the statements are made available

*For the purpose of these rules, the term "specialized agencies" includes the International Atomic Energy Agency and the General Agreement on Tariffs and Trade.

**In accordance with Economic and Social Council resolution 1988/8 of 25 May 1988, representatives designated by specialized agencies, intergovernmental organizations and the International Narcotics Control Board shall have the same rights they have at sessions of the Council.

to it at the site of the Conference, provided that a statement submitted on behalf of a non-governmental organization is related to the work of the Conference and is on a subject in which it has special competence.

XII. SUSPENSION AND AMENDMENT OF THE RULES OF PROCEDURE

Method of suspension

Rule 70

Any of these rules may be suspended by the Conference provided that twenty-four hours' notice of the pro-

posal for the suspension has been given, which may be waived if no representative objects. Any such suspension shall be limited to a specific and stated purpose and to a period required to achieve that purpose.

Method of amendment

Rule 71

These rules of procedure may be amended by a decision of the Conference taken by a two-thirds majority of the representatives present and voting, after the General Committee has reported on the proposed amendment.

DOCUMENT E/CONF.82/10*

Report of the Credentials Committee

*[Original: English]
[15 December 1988]*

1. At its 1st plenary meeting, on 25 November 1988, the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in accordance with paragraph 4 of the rules of procedure of the Conference, appointed a Credentials Committee composed of the following States: Bolivia, Botswana,** China, Côte d'Ivoire,** Jamaica,** Luxembourg, Thailand, Union of Soviet Socialist Republics and United States of America.

2. The Credentials Committee held one meeting on 12 December.

3. Edouard Molitor (Luxembourg) was unanimously elected Chairman of the Committee.

4. The Committee had before it a memorandum by the Executive Secretary of the Conference, dated 6 December, on the status of credentials of representatives of States attending the Conference. Additional information on credentials received by the Executive Secretary of the Conference after the issuance of the memorandum was provided to the Committee by the Secretary of the Committee. On the basis of the information made available to it, the Committee noted that, as at 12 December:

(a) Formal credentials issued by the Head of State or Government or by the Minister for Foreign Affairs, as provided for in rule 3 of the rules of procedure of the Conference, had been submitted by the representatives of the following 93 States participating in the Conference: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Botswana, Bulgaria, Burma, Byelorussian Soviet Socialist Republic,

Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Denmark, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Senegal, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, Yemen, Yugoslavia and Zaire;

(b) Credentials for the representatives of the following 5 States, issued by their respective Heads of State or Government or Ministers for Foreign Affairs, had been communicated to the Secretary-General of the Conference in the form of a cable: Dominican Republic, Ecuador, Madagascar, Uruguay and Viet Nam;

(c) The designation of the representatives of the following State had been communicated to the Executive Secretary of the Conference by means of a letter, note verbale or cable from the Ministry for Foreign Affairs: Bangladesh;

(d) The designation of the representatives of the following 6 States had been communicated to the Executive Secretary of the Conference by means of a letter, note verbale or cable from their respective permanent representatives or permanent missions to the United Nations (Geneva, New York or Vienna) or their embassies at Vienna: Bahrain, Brazil, Iraq, Saudi Arabia, Tunisia and United Arab Emirates;

*Incorporating document E/CONF.82/10/Corr.1.

**These States were elected at the 3rd plenary meeting, on 1 December 1988.

(e) As at 12 December, no credential had been received from the representative of the following State participating in the Conference: Cape Verde.

5. Statements relating to the credentials of representatives of States participating in the Conference were made by the representatives of the United States of America and the Union of Soviet Socialist Republics.

6. The representative of the United States of America stated that, while his delegation was not challenging the credentials of the delegation of Afghanistan for participation in the Conference, his delegation wished to make it clear that his Government remained deeply concerned about the situation in Afghanistan. In not pressing an objection concerning the representatives of Afghanistan, the United States should in no way be considered as accepting the regime at Kabul as legitimate or representative of the Afghan people.

7. The representative of the Union of Soviet Socialist Republics stated that the claim by one of the delegations questioning the credentials of the representatives of the Republic of Afghanistan, which acted internationally as a sovereign independent and non-aligned State and a fully legitimate Member of the United Nations, was nothing but a deliberate attempt to distort the historic and political realities. Such claims were contrary to the goal of a thorough and comprehensive settlement of the situation regarding Afghanistan, the way to which lay through scrupulous implementation of the Geneva agreements.

8. The Chairman proposed that, taking into account the statements made and positions expressed by members of the Committee, which would be reflected in the Committee's report, the Committee adopt the following draft resolution:

"The Credentials Committee,

"Having examined the credentials of the representatives to the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic

Drugs and Psychotropic Substances, referred to in paragraph 4 of the present report,

"Taking into account the statements made by delegations during the debate,

"1. Accepts the credentials of the representatives of the States referred to in paragraph 4(a), (b), (c) and (d) above;

"2. Accepts the provisional participation of the representatives of the States referred to in paragraph 4(e) pending the receipt of their credentials;

"3. Recommends that the Conference should approve the report of the Credentials Committee."

9. The draft resolution proposed by the Chairman was adopted by the Committee without a vote.

10. Subsequently, the Chairman proposed that the Committee should recommend to the Conference the adoption of a draft resolution (see paragraph 12 below). The proposal was approved by the Committee without a vote.

11. In the light of the foregoing, the present report is submitted to the Conference.

RECOMMENDATION OF THE CREDENTIALS COMMITTEE

12. The Credentials Committee recommends to the Conference the adoption of the following draft resolution:

"Credentials of representatives to the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

"The Conference,

"Having examined the report of the Credentials Committee,

"Approves the report of the Credentials Committee."

Main Conference documents

DOCUMENT E/CONF.82/3*

Report of the Review Group on the draft Convention

[Original: English]
[20 July 1988]

Chapter I

MATTERS CALLING FOR ACTION BY THE CONFERENCE

1. The Review Group on the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, having taken note of document DND/DCIT/14 prepared by the Secretariat concerning the organization of the Conference, makes the following recommendations to the plenipotentiary conference:

Decision

The Review Group requests the Secretary-General to circulate to States a draft timetable on the organization of work no later than three weeks before the Conference.

Recommendation I

Provisional agenda for the Conference

The Review Group recommends the adoption of the provisional agenda for the Conference as set out in document DND/DCIT/13 as well as in paragraph 7 of DND/DCIT/14 except that:

(a) Sub-item 3(h) "Organization of work" should precede sub-item 3(g) "Establishment of other committees, subcommittees or working groups";

(b) Sub-item 3(h) should be amended to provide for inclusion of documentation entitled "Relevant portions of the report of the Review Group concerning organizational matters" and "Draft timetable of work";

(c) The documentation for item 4 "Consideration of a draft convention against illicit traffic in narcotic drugs and psychotropic substances" should be amended following the word "including" as follows: "the draft articles of the convention against illicit traffic in narcotic drugs and psychotropic substances, submitted by the Commission on Narcotic Drugs at its tenth special session and those submitted as part of its report by the Review Group". The documentation should also include the report of the Review Group.

(For the text of the provisional agenda for the Conference, see E/CONF.82/1; for the text of the note by the Secretariat on organization contained in DND/DCIT/14, as amended, see E/CONF.82/4.)

Recommendation II

Provisional rules of procedure for the Conference

The Review Group recommends the adoption of the provisional rules of procedure for the Conference as set out in document DND/DCIT/10 and Corr.1-3 with amendments to rules 3, 4, 5, 6, 7, 11, 29, 30, 31, 59, 60 and 61.

(For the text of the provisional rules of procedure for the Conference, see E/CONF.82/2.)

Recommendation III

Appointment of the members of the Credentials Committee

The Review Group recommends that the Conference should appoint the same Credentials Committee as at the forty-third session of the General Assembly, on the understanding that, if a State is not present, the Conference should replace that State by another State from the same regional group.

Recommendation IV

Election of officers

The Review Group recommends the following distribution of seats on the General Committee of the Conference:

Eight representatives from African States;
Seven representatives from Asian States;
Three representatives from Eastern European States;
Five representatives from Latin American States;
Six representatives from Western European and other States.

The Review Group further recommends that agreement on a list of candidates for the President of the Conference, as well as for the officers of the General Committee and of the Committee of the Whole, should be reached before

*Incorporating documents E/CONF.82/3/Corr.2 and Corr.3 and excluding annexes I, III and V.

the opening of the Conference, thus allowing elections by acclamation and dispensing with the requirements of a secret ballot.

Recommendation V

Organization of the work of the Conference

The Review Group recommends that:

(a) The Conference should be held for 18 working days from 25 November to 20 December 1988, preceded by one day of pre-Conference consultations on 24 November (see recommendation VI below);

(b) As a general rule, and taking into account the availability of interpretation facilities, four meetings should be held a day, namely, no more than two simultaneous meetings of the Plenary, Committee of the Whole or Subcommittee;

(c) The Committee of the Whole should be convened on the afternoon of 25 November to consider such organizational matters as may be required;

(d) The Committee of the Whole should establish a Subcommittee reporting to the Committee of the Whole from time to time on the texts which have been approved for submission to the Committee of the Whole.

Recommendation VI

Holding of pre-Conference consultations

The Review Group recommends that consultations among States be held at Vienna on a continuing basis until the Conference and that a one-day pre-Conference consultation be held at Vienna immediately prior to the opening of the Conference so that as many organizational and procedural questions as possible can be settled in advance of the Conference in order to allow maximum time at the Conference itself for the consideration of substantive items.

Recommendation VII

Allocation of agenda items

The Review Group recommends that the Committee of the Whole, on the basis of a draft timetable prepared by the Secretary-General (see Decision above) and considered during pre-Conference consultations, should assign to itself consideration of articles 1 to 6 and allocate the remaining articles, the preamble and the implementation and final clauses to the Subcommittee mentioned in recommendation V(d).

Chapter II

BACKGROUND AND ORGANIZATION OF THE MEETING OF THE REVIEW GROUP

A. Background of the meeting

2. The General Assembly, in its resolution 39/141 of 14 December 1984, requested the Commission on Narcotic

Drugs, through the Economic and Social Council, to initiate the preparation of a new draft convention against illicit traffic in narcotic drugs and psychotropic substances. In furtherance of that objective, the Commission, in resolution 1 (S-IX) of 14 February 1986, identified 14 elements for inclusion in an initial draft convention and requested the Secretary-General to prepare such a draft for circulation to Governments for comment. The Commission considered the draft Convention and Governments' comments thereon at its thirty-second session in February 1987.

3. The Economic and Social Council, in its resolution 1987/27 of 27 May 1987, which had been submitted as a draft by the thirty-second session of the Commission on Narcotic Drugs, requested the Secretary-General to prepare a working document consolidating the first draft of the Convention, comments made by Governments to date on that draft and the results of the deliberations of the Commission on the draft at its thirty-second session; the working document was also to contain a draft preambular part, a section on the implementation mechanisms and draft final clauses. The Council further requested the Secretary-General to circulate that working document to States and decided that an open-ended intergovernmental expert group should meet if necessary twice in 1987, to review the working document and, wherever possible, reach agreement on the articles of the draft Convention and prepare a revised working document. The Secretary-General accordingly prepared the consolidated working document requested by the Council, circulated it to Governments and convened two meetings of the expert group at the Vienna International Centre in 1987 (29 June-10 July 1987 and 5-16 October 1987).

4. In view of the fact that the expert group required additional time to continue its examination of the draft text before submission to the Commission at its tenth special session (8-19 February 1988), the General Assembly, in resolution 42/111 of 7 December 1987, requested the Secretary-General to consider convening a further intergovernmental expert group meeting for a period of two weeks immediately prior to that session to continue revision of the paper on the draft Convention. In that same resolution, the Assembly requested the Commission "to consider and, if possible, approve the draft Convention at its tenth special session". The third meeting of the expert group met at the Vienna International Centre from 25 January to 5 February 1988.

5. At its tenth special session, the Commission on Narcotic Drugs reviewed the draft text of the Convention in the light of the reports of the three meetings of the open-ended intergovernmental expert group. The reports showed that the expert group had been able to examine some articles in depth, whereas time constraints had only allowed varying degrees of examination with respect to other articles. The Commission, following its discussions on the draft text, which are reflected in chapter II of its report on the tenth special session,¹ decided to forward the following articles, as amended, to the Conference:

¹Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13).

- (a) Articles 7, 8, 9, 10, 11, 11 *bis*, 12, 13 and 14;
- (b) Articles II-VI of the draft implementation measures (the Commission decided to delete article I);
- (c) Articles I-VIII of the draft final clauses and a proposed additional article concerning the authentic text of the Convention and the transmission of certified copies to States Parties.

The Commission also decided that the draft preamble should be forwarded to the Conference for further consideration.

6. The Commission also approved a draft resolution for submission to the Economic and Social Council which set out the measures which it recommended to further the preparation of the draft Convention. That draft resolution was adopted by the Council on 25 May 1988 as resolution 1988/8, entitled "Preparation of an international convention against illicit traffic in narcotic drugs and psychotropic substances". In that resolution, the Council decided to convene a Review Group on the draft Convention and also to convene, no sooner than four months after the meeting of the Review Group, a plenipotentiary conference for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances. The mandate of the Review Group, as set out in paragraph 9 of Council resolution 1988/8 was:

"(a) To review the draft texts of articles 1 to 6 referred to it by the Commission on Narcotic Drugs with a view to submitting them to the plenipotentiary conference. In addition, the group may review the remaining articles and related draft texts with a view to making those changes that may be necessary to achieve overall consistency of the draft text of the convention to be submitted to the plenipotentiary conference;

"(b) To consider organizational matters relating to the conference and the draft provisional rules of procedure to be prepared by the Secretary-General."

7. The specific mandate with respect to the six substantive articles, as reflected in the report of the Commission in its tenth special session, was as follows:

Article 1

"The Commission agreed that article 1 should be considered after the review of the convention had been completed and that the review group should identify in the text of the convention the terms that should be defined in article 1."²

Article 2

"The Commission decided to forward the text of article 2 to the review group on the understanding that it would have the limited mandate of reviewing the provisions of the new penultimate paragraph."³

Article 2 bis

"The Commission decided to submit the entire article 2 *bis* to the review group for further study."⁴

²Ibid., para. 100.

³Ibid., para. 76.

⁴Ibid., para. 79.

Article 3

"In view of the importance of the article in the new convention, the Commission considered it advisable to refer its provisions to the review group for further consideration in order to obtain consensus on a final text."⁵

Article 4

"The Commission decided to submit article 4 to the review group for further review."⁶

Article 5

"In view of the lack of consensus on those parts of the article considered by the Expert Group at its third session and of the fact that the Group had not been able to finish consideration of paragraphs 10-13, the Commission decided that the article should be forwarded to the review group for in-depth consideration."⁷

Article 6

"The Commission decided that, owing to the relationship between the provisions of article 5 and those of article 6, the latter article (which had been adopted by consensus by the Expert Group) should be referred to the review group with the understanding that the article as such was not to be reconsidered."⁸

8. In the course of the discussions at the tenth special session of the Commission, one representative introduced a new article 6 *bis*. The Commission "decided to refer the [. . .] proposed draft of article 6 *bis* to the review group and requested it to give favourable attention to the provisions contained therein".⁹ Some representatives "reserved their position on the substantive content and formulation of the proposed article but considered that the decision as to whether the proposed article warranted inclusion in the convention should be left to the review group".⁹

B. Organization of the meeting

9. The Review Group on the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances met at the Vienna International Centre from 27 June to 8 July 1988. The Review Group was attended by 236 experts from the following 75 countries: Algeria, Argentina, Australia, Austria, Bahamas, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Jordan, Kenya, Lebanon, Madagascar, Malaysia, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan,

⁵Ibid., para. 87.

⁶Ibid., para. 90.

⁷Ibid., para. 96.

⁸Ibid., para. 98.

⁹Ibid., para. 99.

Panama, Peru, Philippines, Poland, Portugal, Saudi Arabia, Senegal, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Zaire and Zambia. It was also attended by seven observers from the following six intergovernmental organizations: Arab Lawyer's Union, Arab Security Studies and Training Centre, Commission of the European Communities, Council of Arab Ministers of Justice, Customs Co-operation Council and League of Arab States. The secretariat of the International Narcotics Control Board was also represented.

10. At its 1st meeting, on 27 June 1988, the Review Group elected by acclamation the following officers:

Chairman: Enrique Parejo González (Colombia)

First Vice-Chairman: Gioacchino Polimeni (Italy)

Second Vice-Chairman: E. A. Babayan (USSR)

Third Vice-Chairman: Maurice Randrianame (Madagascar)

At its 2nd meeting, on 28 June 1988, the Review Group further elected by acclamation Mr. Mya Than (Burma) as Rapporteur.

11. At its 2nd meeting, the Review Group also approved its provisional agenda (DND/DCIT/11) and, as amended, the provisional timetable (DND/DCIT/12). In adopting its timetable, the Review Group decided to first examine article 1 in a general debate and then proceed to consider articles 2, 5 and 3. Articles 2 *bis* and 4 would next be taken up together. Article 6 would be reviewed with a view to establishing the consistency required by the Review Group's mandate. Article 1 would then be completed. Thereafter article 6 *bis* could be considered, followed by the draft rules of procedure and organizational matters.

12. The Review Group had before it the working document (DND/DCIT/9) prepared by the Secretary-General prepared pursuant to paragraph 6 of Economic and Social Council resolution 1988/8; the draft provisional rules of procedure of the United Nations conference for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances (DND/DCIT/10) prepared by the Secretary-General pursuant to paragraph 10(d) of Council resolution 1988/8; a draft provisional agenda of the Conference (DND/DCIT/13); and a note by the Secretariat on the organization of work of the Conference (DND/DCIT/14). For its information, the Review Group also had before it a note by the Secretariat (DND/DCIT/15) transmitting an excerpt from the report of the Legal Committee of the International Maritime Organization on the work of its fifty-ninth session relevant to the draft Convention.

13. The Review Group held 19 plenary meetings, including a night meeting to adopt its report on 8 July; it did not hold plenary meetings on the afternoon of 30 June and 1 July in order for an informal working group to meet with full interpretation facilities to examine various articles

with a view to seeking consensus. The informal working group also held two night meetings on 29 June and 6 July.

14. During the course of its meeting, the Review Group considered and agreed to transmit to the Conference the texts of articles 1, 1 *bis*, 2, 2 *bis*, 3, 4, 5, 5 *bis*, 6 and 6 *bis*, established by consensus or with variants indicated in square brackets where no agreement could be reached.*

15. The discussions of the Review Group with respect to the draft provisional rules of procedure for the plenipotentiary conference are summarized in chapter IV, section A, below. At its last meeting, on 8 July 1988, the Review Group adopted its report and decided that the revised text of the rules of procedure should also be transmitted to the Conference (E/CONF.82/2).

Chapter III

REVIEW OF THE DRAFT CONVENTION

Article 1

16. The Review Group heard at the outset a statement from one representative regarding the measures adopted by his Government in the fight against the illicit traffic and the high priority it attached to the drafting of an effective instrument that would prove acceptable to as many States as possible. To that effect, a detailed consideration of the provisions of the draft Convention, and in particular the introduction of relevant safeguard clauses, was necessary so that the sovereignty of States would not be undermined nor the independence of the legislature and judiciary compromised. While the rapid progress made in drafting the new instrument was commendable, there was, in his opinion, insufficient articulation between the articles; the Review Group should accordingly undertake consideration of the draft Convention article by article, in their numerical order, with a view to addressing the issues still in abeyance and forwarding to the plenipotentiary conference a consistent draft. Following a general discussion on this proposal in the context of the task to be performed by the Review Group in the limited time at its disposal, there was general agreement that the Group should strictly abide by the explicit mandate given to it by the Commission and approved by the Economic and Social Council in its resolution 1988/8.

17. Some representatives, with reference to agenda item 5, indicated that at the appropriate time they would make a statement regarding the substance of certain articles, such as article 12, which were not to be reviewed by the Group but should none the less, in their opinion, be reconsidered in due course. (See paragraphs 192-195 below.)

*Those texts, together with the texts approved for transmittal to the Conference by the Commission on Narcotic Drugs at its tenth special session (See *Official Records of the Economic and Social Council, 1988, Supplement No. 3* (E/1988/13), chapter II), appear in annex II. Those proposals put forward by delegations that were not considered, and therefore not reflected in the above-mentioned articles, are contained in annex IV.

18. As instructed by the Economic and Social Council, the Group undertook the review of articles 1 to 6 referred to it by the Commission on Narcotic Drugs and decided to start with article 1.

19. It was agreed that the discussion should take as a basis the text proposed by the informal working group to the Commission on Narcotic Drugs at its thirty-second session with the understanding that the definitions of the terms therein would be cross-referenced to those in the original Secretariat draft wherever appropriate.

20. Some representatives expressed their dissatisfaction with the current structure of draft article 1 and proposed that its content be divided into two categories dealing respectively with definitions concerning institutions and terms of a technical or substantive nature. It was indicated that the structure of article 1 in both the original Secretariat draft and the draft proposed by the informal working group was based on the system used in the Single Convention on Narcotic Drugs, 1961, where terms were listed in the English alphabetical order. One representative stressed the need for specific reference in the introductory sentence of article 1 to the relevant treaties already in force in the field of international drug control.

21. The Group approved the definition of "Board" as drafted by the informal working group.

22. As regards "commercial carriers", it was pointed out that the topic was dealt with in article 11 and that the definition should be adequate to the content of the substantive article. In this respect, the proposal made by some representatives to enlarge the definition in order to include non-commercial carriers was questioned since article 11 concerned only commercial carriers.

23. The addition of the words "public or private" to qualify the word "entity" was suggested, in line with the original Secretariat draft of article 1. The suggestion was not opposed, but some representatives considered that such an addition, although acceptable, was superfluous.

24. A proposal to mention the transport of mails in addition to persons and goods, in line with conventions on civil aviation, was supported by several representatives. Other representatives questioned the need for such a specific reference.

25. One representative suggested the expression "for a consideration" to cover any onerous transaction. It was suggested to add to the expression "for remuneration or hire" the words "or other forms of reward", so as to cover remuneration of a non-monetary nature. Reference was made in this respect to the experience of the International Civil Aviation Organization (ICAO). Some representatives objected to this addition, on the ground that cases of non-professional transport (e.g. the lending of a yacht in exchange for some participation in expenses) would be inopportunistically covered. One representative referred to the need to also cover non-remunerated transport. Most representatives supported a text which would cover transactions of a non-monetary nature, such as barter. It was decided that

in the French and Spanish texts, respectively, the expressions "*à titre onéreux*" and "*a título oneroso*" would be used.

26. The definition of "Commission" was approved by the Group.

27. As regards the definition of "controlled delivery", it was brought to the attention of the Group that the words "controlled substances" and "specific chemicals" used in the proposed definition should be replaced by "narcotic drugs and psychotropic substances" and "substances in List A and List B" respectively, in conformity with the terminology used in the substantive articles. No agreement could be reached as to whether the substances in List A and List B could be made subject to controlled delivery. The Group therefore decided to leave those terms in square brackets.

28. Several representatives emphasized that it was essential that the purposes of controlled delivery be expressly stated in the definition so that the meaning of this law enforcement technique would be clear for all concerned with its implementation. Other representatives pointed out that the objectives of controlled delivery were already specified in article 7 and need not be repeated in the definition.

29. The Group agreed to indicate in the definition, using the same wording as in article 7, paragraph 1, that the technique was to be applied "with a view to identifying persons involved in illicit traffic and to taking legal action against them".

30. Some representatives expressed the opinion that the possibility of consignments of innocuous substances substituted for illicit drugs by the competent authorities should be covered in the definition. Other representatives objected to this suggestion on the ground that the substitution of innocuous substances could give rise to legal difficulties, in particular when seeking to prove the identity and the illicit nature of the content of the seized consignment. It was also observed that, from a practical standpoint, it would be extremely difficult to determine whether or not a given substance was innocuous.

31. It was pointed out that the substantive article did not refer to the issue of substitution and that definitions should not introduce new substantive elements; attention should rather concentrate on the articulation of the definition of controlled delivery with the existing content of article 7. On the other hand, it was also pointed out that the substantive article did not require a State to substitute innocuous substances for illicit ones. The purpose of the definition was to act as a guideline for present and future use of the technique.

32. No agreement could be reached and the Group decided to leave in square brackets the reference to "consignments which are intercepted by competent authorities and allowed to continue with the narcotic drugs or psychotropic substances replaced by innocuous substances".

33. Some representatives drew attention to the case of States where recourse to controlled delivery was prohibited

under the domestic legislation and proposed the inclusion in the definition of a safeguard clause to the effect that the technique could only be applied "if permitted by the national laws and regulations of a State Party". Other representatives pointed out that a safeguard clause regarding the basic principles of the respective national legal systems was already included in article 7, paragraph 1, and that it was in any case inappropriate to include a safeguard clause in a definition. It was also noted that the proposed proviso would not take into account the case of States where the technique of controlled delivery was neither permitted nor prohibited, but still implemented on the basis of appropriate agreements or arrangements with other States. In view of the divergent viewpoints, it was decided that the proposed safeguard clause would be included in the definition in square brackets.

34. The Group agreed to examine the definitions of "freezing", "seizure" and "confiscation" after its review of article 3. One representative suggested that the written proposals concerning those definitions submitted by his delegation be placed in square brackets in the text. There was no discussion on this subject. Another representative also suggested that the definition of forfeiture should be examined as it is mentioned in subparagraph 2(a) of article 2.

35. With regard to the definition of "illicit traffic", several representatives expressed their preference for the definition proposed by the informal working group at the thirty-second session of the Commission, particularly because of its linkage with the provisions of the 1961 Convention, of that Convention as amended by the 1972 Protocol, and of the Convention on Psychotropic Substances, 1971. This correlation was considered essential as the existing Conventions, in setting up the international drug control system, provided standards against which the illicit nature of the activities listed in the new Convention could be gauged. It was stressed that the definition of illicit traffic should be consistent with the corresponding definitions in the existing treaties.

36. Several other representatives considered that the definition contained in the original Secretariat draft was more comprehensive. In their view, the definitions in article 1 of the new Convention should be self-contained and independent of those in the existing drug control treaties; reference to earlier instruments could be irrelevant with regard to States which would become Parties to the new Convention but were not Parties to the existing Conventions.

37. A proposal to include national laws as an additional or alternative standard was objected to by several representatives. It was argued that because of the diversity of national legislations, such a provision would introduce a subjective standard that would go against the harmonization sought by the new Convention and undermine the scope of the instrument. Given the lack of agreement, it was decided that this proposal be placed in square brackets at the request of the delegation which had put it forward.

38. Several representatives expressed the view that since the listing of activities constituting illicit traffic could not

pretend to be exhaustive, it should be open-ended so as to permit the addition of new terms as may become necessary to cover the evolving aspects of the phenomenon. To that effect it was suggested that the word "means" be replaced by the word "includes" or the words "*inter alia*" inserted after the word "means"; alternatively the words "and the traffic in any other form" could be inserted at the end of the listing after the word "exportation". Given the lack of agreement, it was decided that this proposal be placed in square brackets at the request of the delegation which had put it forward.

39. It was suggested that certain terms, such as "supply" and "acquisition", should be included in the definition. Attention was drawn to terms in the draft, such as "sowing" and "cultivation" or "fabrication" and "manufacture", which introduced a certain degree of tautology. Other terms such as "prescription" and "conditioning" were considered to be vague and subject to divergent interpretations. The opinion was expressed that these additional terms should be included. Given the lack of consensus, it was agreed that all these terms were to be placed in square brackets.

40. One representative, supported by another, proposed that the definition of illicit traffic should exclude the possession of small quantities of drugs intended for personal use; it was argued that the broad scope of the definition under consideration, which encompassed all the offences enumerated in article 36 of the 1961 Convention, would result in all those punishable acts being considered as coming under the serious offence of illicit traffic, to which the severe provisions of the Convention would be applicable. Several representatives objected to this proposal, pointing out that small quantities of drugs for individual consumption, when aggregated, resulted in large-scale trafficking; thus each individual consumer indirectly financed the illicit traffic. It was noted that while the quantities involved may affect the level of sanctions, unlawful possession *per se* constituted an offence under the existing drug control treaties. It was also stressed that inclusion of such a provision would run counter to the thrust and spirit of the new Convention and undermine the functioning of the international drug control regime based on existing Conventions, the objective of which was to limit the use of narcotic drugs and psychotropic substances to medical and scientific purposes. It was furthermore considered inappropriate to introduce this form of safeguard clause in article 1, dealing with definitions; the proper place for such clauses, when found necessary, was in the substantive articles. Several representatives stated that, in their view, offences of a minor nature, as well as cases when the offender was a drug abuser, were already adequately covered by the provisions of article 2, subparagraph 2(c).

41. Several representatives, noting that a number of terms included in the definitions were already defined in the substantive articles or did not require a special definition because they could be easily made understandable in the body of the draft Convention, proposed the deletion of article 1 so as to avoid having a double set of definitions. It would be preferable, in their view, to incorporate the present definitions of terms of a substantive nature in the

operative paragraphs of the respective articles. Several other representatives held the opposite view and considered that article 1 was a key element in the structure of the draft Convention and would constitute a valuable guide for the interpretation of its provisions.

42. Several representatives advocated the deletion of the last sentence in the definition of illicit traffic which included traffic in substances in List A and List B. In their view, such inclusion did not conform with the provisions of article 8 which dealt with the monitoring of substances in Lists A and B likely to be used in the illicit manufacture of narcotic drugs and psychotropic substances but did not impose a prohibition on licit trade in substances in those Lists; many of those substances were in fact widely used in the licit trade. Some other representatives stressed the importance of this provision and supported its retention. In their opinion, the supply of substances in Lists A and B was a major constituent of the illicit drug trafficking. In view of the divergent positions, the Group agreed to retain the provision in square brackets.

43. Several representatives considered that the definition of illicit traffic in the text of the informal working group should be complemented by a provision that would cover the organization, management, financing or facilitation of the operations or activities constituting the offence of illicit traffic. It was accordingly agreed that the second sentence of the original Secretariat draft should be included in the definition.

44. The majority of delegations stressed that the terms already defined in the relevant existing Conventions should be used in the new Convention in the same sense and with the same meaning, and that the new definitions should in no way contradict the existing ones.

45. The Review Group decided to resume consideration of definitions for inclusion in article 1 after completing its review of the substantive articles of the draft Convention. In fact, the Group was unable to return to this article because of lack of time.

46. Before moving to article 2, one delegation submitted a proposal for a new article 1 *bis* with the title "Scope of the Convention". The delegation making the proposal expressed its readiness to avoid the prolonged debate on the floor that might result from the fact that this was a new proposal; what the delegation expected was for its proposed new article to be regarded as formally introduced as part of the draft articles and to be placed between articles 1 and 2. The Chairman indicated that this new proposal should be discussed by the Review Group once it had completed its work under its mandate.

Article 2, new penultimate paragraph

47. The Group began its review of the substantive articles with the consideration of article 2. The Group took note that its mandate, as regards article 2, was limited to the review of the new penultimate paragraph left in square brackets.

48. Several representatives expressed their reservation with regard to the provisions of the paragraph, on the

grounds that it would prejudice the right of asylum and the protection of refugees. Some of them favoured the addition at the end of the paragraph of a safeguard clause stipulating that the right of asylum as recognized in international law should not be impaired. Some other representatives stressed that the right of asylum was strictly protected in their national constitution and in the case-law of their highest courts. They therefore considered this paragraph as a possible obstacle to the adherence to the new Convention and supported its deletion.

49. Regarding the location of the paragraph under consideration, several representatives recalled that it was previously included as paragraph 6 in article 4 dealing with extradition; they favoured the original location as more logical. Other representatives pointed out that the paragraph was relevant to articles 3, 4, 5 and 6, dealing respectively with confiscation, extradition, mutual legal assistance, and other forms of cooperation. The issue of political or fiscal offences should, in their view, be treated in connection with each of these articles, since the standpoint was likely to vary according to the type of cooperation concerned.

50. The majority of representatives favoured the retention of the paragraph in article 2. One representative suggested that, since it stated a general principle, the paragraph could be separated from article 2 and become provisionally an independent article.

51. Entering into the details of the paragraph, some representatives considered that the words "including, in particular, cooperation under articles 3, 4, 5 and 6" were superfluous and could be dispensed with.

52. As regards the two formulations: "political or fiscal offences" and "offences political or fiscal in character" left in square brackets, general preference was expressed for the first wording. The Group also agreed on retaining the words "or regarded as politically motivated".

53. Concerning the second part of the paragraph, several representatives expressed doubts concerning its logical articulation with the first part. They pointed out that while the first part dealt with the political or fiscal character of the offence, the second part focused on a completely different ground for refusing cooperation. The two ideas should not, in their view, be joined in the same sentence and the second part of the paragraph, if kept, should be redrafted. Several representatives considered that such an escape clause would be more appropriate in another part of the draft Convention, as for instance in article 4, as a ground for refusing extradition. Some representatives pointed out that the concern expressed in this clause was already taken care of in other parts of the draft Convention, where general principles of international law or domestic law were referred to. For this reason, they favoured its deletion. The Group finally decided that the clause should be examined in the context of article 4.

Article 2 bis

54. Concerning article 2 *bis*, two representatives considered that the expression "establish its jurisdiction",

wherever it appeared in the article, should be substituted with the words "exercise its jurisdiction". Several representatives objected to this proposal. They stressed that establishment of jurisdiction was undoubtedly the subject-matter of the article and a prerequisite for the exercise of jurisdiction. In support of this view, reference was made to the corresponding provisions of several other conventions in which the expression "establish jurisdiction" was uniformly used. It appeared that, for one of the two representatives supporting the replacement of "establish jurisdiction", a question of translation was involved, the word "establish" having been translated in Spanish by "*afirmar*" instead of "*establecer*". The meaning of the expression was therefore equivocal. It was agreed that the Spanish translation should be revised.

55. One representative suggested that in subparagraph 1(b)(i) and 2(a)(ii), which referred to nationality and habitual residence as grounds of jurisdiction, the words "if in both cases the alleged offender is located in its territory" should be added, with a view to avoiding conflicts of jurisdiction. It was pointed out by another representative that the location of the offender did not affect the establishment of jurisdiction but only its exercise.

56. In subparagraph 1(b)(iii), the Group agreed to replace the word "defined" by "listed", as this term was considered more accurate. One representative suggested to include the words "as a preparatory act" before "with a view to the commission" in order to clarify the sentence. The Group decided to include these words in square brackets.

57. Some representatives considered that subparagraph 1(b)(iii) was not clear and that, in the situation to which it seemed to refer, their countries would not be able to establish their jurisdiction. They proposed that this subparagraph be placed in square brackets.

58. One representative proposed that a third ground for refusing extradition be mentioned in subparagraph 2(a)(iii), namely the case where the death penalty might be imposed on the offender in the requesting State. An alternative formulation of the same proposal was suggested by another representative, referring to "more severe penalties" instead of "death penalty". One representative considered that this article was not the proper place for mentioning such a case; in his opinion, this should be dealt with at the national level, with a mechanism making extradition conditional on the assurance that the death penalty would not be imposed. Another representative stressed that such a conditional approach to extradition would be incompatible with the sovereign power of the requesting State to impose the penalties provided for by its domestic law.

59. Paragraph 2 gave rise to a discussion on whether or not it should be deleted. Some representatives reaffirmed that the fate of paragraph 2 was contingent on what would be ultimately decided about the formulation of article 4, paragraph 8. If in the said paragraph all references to article 2 *bis*, paragraph 2, were to be deleted, then paragraph 2 should also disappear. Since, so far, a reference to article 2 *bis*, subparagraph 2(a) had been left in square

brackets in article 4, paragraph 8, subparagraph 2(a) should itself be provisionally kept in square brackets. Subparagraph 2(b), which dealt with a mere option to establish jurisdiction and was no longer referred to in article 4, paragraph 8, should definitely be deleted.

60. Some other representatives objected to this view, on the ground that deletions effected in article 4, paragraph 8, had no logical bearing on article 2 *bis*, paragraph 2. Deletion of subparagraph 2(a) would leave a loophole in the draft Convention as to the establishment of jurisdiction, since article 4, paragraph 8, dealt only with the exercise of jurisdiction. Although subparagraph 2(b) only provided for an option to establish jurisdiction, it constituted a useful reminder and encouragement for the States to do so and should therefore be kept. Pursuant to this discussion, it was decided to leave the whole paragraph 2, as well as each of its subparagraphs (a) and (b), in square brackets.

61. Concerning paragraph 3, a proposal was approved by the Group to use the words "the exercise of any criminal jurisdiction established" instead of the words "any criminal jurisdiction exercised".

62. The Group decided that article 2 *bis*, including the amendments proposed in the course of discussion, and with the agreed square brackets, should be transmitted to the Conference for further appropriate consideration.

Article 3

63. The Group began consideration of paragraph 4 of article 3 of the revised draft, which was placed in square brackets as no agreement had been reached with regard to its content or formulation.

64. Introducing the redraft of the paragraph proposed by his Government, one representative explained that subparagraph 4(c) in the revised draft stipulating that a requested Party shall give effect to a request for confiscation on the basis of and in accordance with its domestic law or bilateral or multilateral agreements was subject to divergent interpretations. According to one interpretation, the requested Party would be required to execute a request from the requesting Party either on the basis of and in accordance with a bilateral or multilateral agreement, or on the basis of and in accordance with its domestic law, if it did not have such an agreement with the requesting Party. This was considered unacceptable as the schemes envisaged in paragraphs 1 and 2 of the article were of an innovative nature and still at an experimental stage between States with similar legal systems and practices. A mandatory wording would therefore cause difficult legal problems and considerably limit the number of States in a position to adhere to the new Convention. In the proposed redraft, the phrase "on the basis of and in accordance with its domestic law or bilateral or multilateral agreements" was accordingly moved to subparagraphs 4(a) and (b). It was furthermore proposed that reference in subparagraphs 4(a) and (b) to the provisions of article 5, concerning mutual legal assistance, should be deleted. Such a reference was considered ambiguous since, according to paragraph 4 of the revised draft, the requested Party was required to execute a request of another Party on the

basis of and in accordance with its domestic law or multi-lateral or bilateral agreements on the one hand, as well as pursuant to certain provisions of article 5 on the other. It was also pointed out that the proposed redraft of paragraph 4 did not provide any specific procedure for a Party to follow in considering a request for confiscation and that the Party had the discretion to "elect" to follow the procedures provided for in its domestic legal system or "conditional on the existence of a relevant treaty".

65. In order to allow for a more general application of the provisions of paragraph 4, another representative proposed a redraft of subparagraphs 4(a) and (b) under which the Party in the territory of which proceeds, property, instrumentalities or other things referred to in paragraph 1 of article 3 are situated, shall effect confiscation of such items as are the subject of an order of confiscation issued by the requesting Party, or as are specified in the request as being liable to confiscation in accordance with the law of the requesting State, to the extent allowed and in the manner provided by the domestic law of the requested Party. Alternatively such requests may be executed in accordance with bilateral or multilateral agreements. It was further proposed to delete paragraph 4(c) of the revised draft as it was considered that the safeguard clause regarding the domestic law of the requesting Party was sufficiently covered in paragraph 9, which stipulated that nothing contained in this article was to affect the principle that the measures to which it refers shall be defined and implemented in conformity with and under the conditions established by the domestic law of a Party. Reference to bilateral and multilateral treaties was considered superfluous in the context envisaged in subparagraph 4(c). One representative stressed the need for the conclusion of bilateral and regional agreements between Parties to take care of the practical elaboration of the provisions of the article.

66. Several representatives expressed support for the redraft of subparagraphs 4(a)-(c) of article 3 as proposed in paragraph 85 above and in particular for the deletion of reference to article 5; in their view, mutual assistance for the execution of a confiscation order, at the request of another Party, should either be regulated by agreements reached between the Parties concerned or by national legislation. It was emphasized, in support of the proposed redraft of subparagraph 4(c), that it was up to the Parties concerned to determine on what basis confiscation was to be effected.

67. Several representatives, on the other hand, considered that reference to article 5 was essential since a number of countries, for which the Convention would constitute the basis for this form of international cooperation, would need some indication of the procedural requirements such as those specified in article 5. It was furthermore indicated that the provisions of article 5, being generally applicable to all forms of cooperation, may not be applicable to the specific measures envisaged in article 3, and that a more detailed provision regarding the procedures applicable in this context would be desirable.

68. One representative expressed the view that the proposed redraft of paragraph 4 would result in inequality

between States which can cooperate on the basis of national legislation and those which need a specific treaty provision to effect such cooperation. In the case of the latter countries it was essential that the provision of paragraph 4 should contain certain procedural details, such as a summary of grounds for issuing a confiscation order.

69. With regard to the relation between existing or future treaties and the provision of this article, it was suggested that, in line with the stance taken in article 5, wherever the corresponding provisions in other treaties were of a specific nature, these should, in preference, be used instead of the present article.

70. Several representatives stressed that the obligation to cooperate in the field of confiscation should be of a mandatory nature; in their view the proposed subparagraph 4(c) stipulating that a Party "may elect" to effect a confiscation order on the basis of national legislation or bilateral or multilateral treaties would be counter-productive as Parties would be in a position to implement the measures at their discretion.

71. One representative indicated that the provision of subparagraph 4(c) had to be considered in conjunction with that of subparagraph 1(a) so as to clarify the procedural mechanism to be used by Parties in implementing the provision of this subparagraph. It was indicated that wherever it was impossible for a Party to effect a confiscation order pursuant to subparagraph 1(a) at the national level, it would be accordingly difficult to execute the provisions in paragraph 4.

72. One representative reiterated the proposal made at the meeting of the tenth special session of the Commission on Narcotic Drugs that the word "confiscation" should be replaced by the word "forfeiture", as in the legislation of his country forfeiture was the ultimate step which followed prosecution resulting in conviction, whereas confiscation was the step which followed seizure and was not indicative as to the final destination of the proceeds or property.

73. One representative proposed the inclusion of a provision to the effect that each Party shall, through a notification to the Secretary-General of the United Nations, indicate the procedure or procedures provided for in subparagraphs 4(a)(i) and (ii) it would apply when acting at the request of other Parties.

74. In its consideration of paragraph 6 of article 3, the Group focused on the words left in square brackets in the revised draft, i.e. the word "property" and the words "shall" and "may" determining the mandatory or optional character of the provision.

75. As regards the words "proceeds" and "property", it was pointed out that there was still uncertainty as to the exact definition of these terms. Several representatives considered "property" as being more comprehensive than "proceeds" and expressed their preference for the retention of the word "property". Some others considered that in the second sentence of the paragraph dealing with derived benefits, "proceeds" should be retained, since there

was a need to limit the scope of this provision. Some representatives referred to paragraph 1 of article 3 in which proceeds, materials and equipment and other instrumentalities were enumerated as subject to confiscation. They expressed the opinion that equipment and instrumentalities should also be included in the scope of paragraph 6.

76. One representative referred to a proposal he intended to introduce with respect to article 1 on definitions, in order to clarify the notions of property and proceeds. Property would be the generic term, therefore including all kinds of property referred to in paragraph 1. This would respond to the concern expressed as to the inclusion of instrumentalities and equipment in the scope of paragraph 6. Proceeds and instrumentalities would be understood as subcategories of property, derived from or used for illicit traffic.

77. In order to clarify the choices to be made concerning the type of measures envisaged in article 3 which would be applicable in the context of paragraph 6, one representative pointed out that it should be borne in mind that the paragraph dealt with three distinct cases: intermingled property, where proceeds of illicit traffic were mingled with property from other sources, either licit or illicit; converted property; and benefits derived from illicit proceeds or property. Seizure, as a provisional measure, could for instance be contemplated in case of proceeds intermingled with licitly acquired property, whereas in such a case confiscation would present difficulties.

78. With respect to the choice between "shall" and "may", some representatives favoured the optional formulation for the whole paragraph, in view of the complexity and innovative character of the matter. Several other representatives expressed their preference for the mandatory wording, with the retention of "shall". They emphasized that most, if not all, proceeds of illicit traffic were intermingled or converted in order to escape detection by law enforcement agencies. Making the provision optional would therefore reduce the effectiveness of article 3 as a whole.

79. Some representatives who favoured the mandatory formulation for the first sentence of the paragraph preferred a careful approach to the second sentence dealing with derived benefits. It was pointed out that the link between those benefits and illicit proceeds or property might be indirect and difficult to establish as, for instance, in the case of benefits derived from intermingled property. For this reason, some representatives considered as essential that the second sentence be optional. Some others suggested that "derived" be replaced by "clearly identified as being derived" in order to stress the requirement for indisputable evidence. Other representatives considered that such a concern regarding evidentiary requirements was not justified as paragraph 7 of article 3, concerning the reversal of the onus of proof, had been designed to deal with the evidentiary aspects of paragraph 6.

80. As a compromise between the mandatory and the optional formulations, one representative suggested that a safeguard clause could be introduced at the end of the

paragraph, referring to domestic law. It was however pointed out that safeguard clauses were already included in paragraphs 8 and 9 of article 3 with respect to the whole article.

81. As it was not clear whether paragraph 9 could be construed as covering cases of offences of a minor nature, one representative proposed the inclusion of a paragraph 6 *bis* to the effect that, notwithstanding the preceding paragraphs of article 3, Parties may abstain from such measures in appropriate cases of a minor nature. It was pointed out by several representatives that this provision could also be considered as covered by the interpretation of the safeguard clause in article 2.

82. The question of giving the article an appropriate title was raised by some representatives. One suggestion was that it could be entitled "Security measures and forfeiture".

83. The Review Group took note of the results of the further consideration of paragraphs 4 and 6 in the informal working group dealing with article 3 and decided that the new formulations arrived at would be incorporated in the redraft of the article to be submitted to the plenipotentiary conference.

Article 4

84. As regards article 4, attention was drawn to the mandate entrusted to the Group by the Commission on Narcotic Drugs, consisting in a further review of the article; it was pointed out that article 2 *bis* on jurisdiction, also submitted to the Group for further review, was to be considered in connection with article 4.

85. Concerning paragraph 1, one representative expressed the view that the use of the expression "established in accordance" was improper and that the word "enumerated" would be preferable. Another representative objected that the meaning of the paragraph would be affected by this change in a way that could not be accepted, since the Parties did not have an obligation to establish as offences under their criminal law all the acts enumerated in paragraph 1 of article 2.

86. One representative pointed out that it was not clear from the provisions of paragraphs 1 and 5 whether offences in article 4 were to be established by the requested or the requesting State or by both. In order to address the issue of dual criminality the Group accordingly agreed to indicate in paragraph 1 that article 4 shall apply to the offences established "by the Parties", in accordance with paragraph 1 of article 2 of this Convention. One representative proposed to insert the word "concerned" after the words "by the Parties". The Group agreed to the addition of this word in square brackets.

87. Concerning paragraph 3, consideration was given to the words "shall" and "may" left in square brackets. Some representatives indicated that, if made mandatory, the provision would be incompatible with their constitutional or legal system and unacceptable by their legislative authorities. Reference was made to article 36 of the 1961

Convention, in which a similar provision had been made optional. Several other representatives emphasized the need for ensuring the effectiveness of the Convention and expressed the view that countries Parties to the Convention that make extradition conditional on the existence of a treaty should have the obligation to consider the Convention as the legal basis for extradition when receiving requests for extradition from Parties with which they have no extradition treaty.

88. One representative pointed out that the wording of paragraph 3 should anyway ensure equality of those countries with those that do not need a treaty basis, but may use their national law as the basis for extradition while having, according to paragraph 4, the obligation to consider drug-related offences defined in the Convention as offences for which extradition may be granted between themselves. The same representative further pointed out that in the last analysis the use of "shall" or "may" did not make any real difference since, even if the provision was drafted in the mandatory form, it created no obligation to extradite but only an obligation to consider the Convention as a basis for extradition. His analysis of the legal implications of paragraph 3 was agreed upon by several other representatives. One representative stated that some countries need a specific extradition treaty and cannot consider this Convention as the legal basis for extradition.

89. In the light of the discussion, the Group decided to retain paragraph 3 with both the mandatory and optional alternatives in square brackets.

90. A proposal was made to amend paragraph 5 to indicate that "except as otherwise provided in this article", extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, "including the grounds upon which the requested Party may refuse extradition", it being noted that these grounds may include, *inter alia*, prosecution for reasons of race, religion, nationality or political opinion. The Group agreed to the proposal, subject to the placing of the introductory exception clause in square brackets, as in the view of some representatives its implications were at this stage unforeseeable as there was as yet no agreement with regard to all the provisions of the article.

91. Concerning paragraph 6, it was pointed out that this provision had already been scrutinized by the Group and provisionally included in square brackets as a new penultimate paragraph of article 2. The Group had now to consider whether the provision was to be retained in article 2 or incorporated in article 4.

92. Some representatives reiterated their reservation regarding the paragraph, in view of the constitutional, legal and judicial requisites which precluded in their respective countries the extradition for political offences; in their opinion, the paragraph should be deleted.

93. Several representatives considered that such an objection stemmed from a problem of interpretation. In their view, the paragraph would neither constitute an exception to the principle of non-extradition for political offences, nor a threat to the right of asylum or a violation of

individual human rights. The main thrust of the provision was to ensure that Parties would act in good faith and that offences in article 2, paragraph 1, would not be construed as political or fiscal. Attention was drawn to other cases where qualification of political offences had been excluded as, for instance, in the Convention on the Prevention and Punishment of the Crime of Genocide and international instruments relating to terrorism or hijacking. In that connection several representatives suggested that the provision should consist of a simple, straightforward statement that offences in article 2, paragraph 1, would not be considered as political or fiscal.

94. In the light of the discussion, the Group agreed to delete paragraph 6 of article 4 and replace the new penultimate paragraph of article 2 by a provision stipulating that for the purpose of cooperation between Parties under this Convention, including, in particular, cooperation under articles 3, 4, 5 and 6, offences established in accordance with this article shall not be considered as political or fiscal offences or regarded as politically motivated.

95. In order to address the reservation of States having constitutional difficulties and problems associated with the fundamental principles of their domestic law, the Group agreed to include a provision at the end of the new penultimate paragraph of article 2 to the effect that the application of this provision shall be without prejudice to the constitutional limitations of the Parties and the fundamental principles of their domestic law. The Group also agreed that the Convention was not intended to prejudice the right to asylum in conformity with international law, and one representative proposed specific language to this effect to be added to the text. The above provisions were placed in square brackets as no consensus was reached.

96. The word "fiscal" was placed in square brackets as some representatives were of the view that, with regard to grounds for refusal of extradition, fiscal offences should not be given the same consideration as offences of a political nature. One representative stated that in extradition treaties only political, not fiscal, offences were normally considered as non-extraditable offences. The idea that fiscal offences were non-extraditable offences was not settled internationally and hence unacceptable, as it would unduly weaken the new Convention. Two representatives proposed the deletion of reference to fiscal offences. One representative emphasized the necessity of retaining reference to fiscal offences particularly since, in the experience of his Government, assistance in the field of extradition and mutual legal assistance had been refused on the grounds that the offences were in violation of fiscal or customs laws.

97. One representative considered that reference to article 4 in the new penultimate paragraph of article 2 was superfluous and should be deleted given the amended provision of paragraph 5.

98. Some representatives indicated that in the event that the amended new penultimate paragraph of article 2 was not retained, consideration should be given to including such a provision in article 4.

99. Concerning paragraph 7 (renumbered 6 following deletion of paragraph 6 of the revised draft), two representatives considered that the refusal of extradition on the ground of nationality should be unconditionally excluded. They therefore favoured the deletion of the exception clause included in the revised draft.

100. Many other representatives indicated on the contrary that non-extradition of nationals was a fundamental principle of international criminal law, recognized and protected in their country at the constitutional or legislative level. In view of such domestic legal constraints, paragraph 7 should be deleted.

101. Most of the representatives who spoke in favour of deletion agreed however to accept the retention of the paragraph, on condition that the safeguards, as formulated in the revised draft, be included. These safeguards should refer not only to the constitution but also to the domestic law of the Parties. One representative requested that the fundamental domestic law and the domestic legal system be also mentioned.

102. One representative indicated that even though the extradition of nationals was allowed in his country, he nevertheless supported the deletion of the provision; he considered that, since most of other countries had legal obstacles to the extradition of nationals, the paragraph would in practice have no application because of lack of reciprocity. This opinion was shared by some other representatives.

103. One representative expressed the view that the first sentence, in which the obligation to facilitate extradition was stated, should be the only one retained. A safeguard clause referring to domestic constitutional or legal limitations should open the first sentence.

104. One representative, supported by some others, proposed the inclusion, at the end of paragraph 7, of a new sentence covering the cases where States had a discretionary power to grant the extradition of nationals. According to the suggested provision, the Parties should endeavour to see this power exercised. It was pointed out that the other provisions of the paragraph did not deal with the cases where a discretionary power existed and that an encouragement to grant extradition in such cases would be useful.

105. One representative recalled that the idea of a link between paragraphs 7 and 10 had been at the origin of the latest version of the revised text. Countries that had legal obstacles to the extradition of nationals had made a step forward in accepting paragraph 7. Other countries in which extradition was subject to strict evidentiary requirements, such as the requirement for *prima facie* evidence, had accepted to endeavour to minimize these requirements as indicated in paragraph 10. The two paragraphs therefore reflected a balanced effort from both sides. The deletion of paragraph 7 could upset this balance.

106. The Group decided to retain paragraph 7 (renumbered as paragraph 6) with the inclusion of the additions proposed in the course of the discussion, keeping in square

brackets the points on which divergent positions could not be reconciled. In order to reflect the link between paragraphs 7 and 10, the Group agreed on a structural change consisting in moving paragraph 10 forward and placing it immediately after paragraph 7 (renumbered 6).

107. In its consideration of paragraph 8, the Group endeavoured to simplify the revised text and to sort out the substantial issues on which no agreement had been reached during the previous discussions. Several proposals were made to add precision or clarity to the wording of the paragraph.

108. In subparagraph 8(a), the Group approved from a linguistic standpoint, a suggestion to refer to "the request of the Party requesting extradition" in order to avoid ambiguity about the requesting Party.

109. One representative proposed that the words "offence of a similar nature" in subparagraph 8(b), be replaced with the words "offence of the same nature" in order to avoid the dangers involved in the appreciation of analogy between offences. In this connection, he emphasized his belief that the punishment of drug traffickers should be commensurate with the gravity of the offence and involve a minimum of 2 or 3 years imprisonment. Another proposal consisted in the replacement of the words "has jurisdiction" with "can exercise jurisdiction", since exercise of jurisdiction could be barred by several circumstances such as diplomatic immunity, concern to avoid double jeopardy, or the statute of limitations.

110. Attention was drawn by one representative to the importance of the words "to another Party" in the expression "if it does not extradite him to another Party". The provision should in his view only apply to cases where extradition had been refused between Parties to this Convention.

111. The condition that the Party in whose territory the offender is present should act "at the request of the requesting Party" gave rise to substantive objections from several representatives. In the opinion of some of them, this condition was incompatible with the sovereignty of States; the right to prosecute should not be conditional on the existence of a request. In response to this objection, it was pointed out that the condition of a request only concerned the international obligation to submit the case for prosecution under this Convention; the right or obligation to prosecute according to domestic law would in no way be affected by this requirement. To further clarify this point, reference was made to paragraph 3 of article 2 *bis*, according to which the Convention did not exclude any criminal jurisdiction exercised in accordance with domestic law. One representative suggested that this provision could be reproduced in paragraph 8 in order to avoid any misunderstanding on this point.

112. Several other representatives objected to the condition of a request on the ground that the international obligation to prosecute should be unconditional and in any case mandatory. If extradition was refused, submission of the case for prosecution should, in their view, be automatically secured in line with the principle *aut dedere aut*

judicare. Reference was made in this respect to the provisions of several conventions such as article 7 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted at Montreal in 1971, and article 10 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted in 1988, which provided for an obligation to submit the case for prosecution as soon as extradition was refused without any reference to a request from the requesting Party. It was further pointed out that crimes against humanity usually gave rise to universal jurisdiction and that for countries signatory to the Quito Declaration against Traffic in Narcotic Drugs, offences of illicit traffic in drugs were qualified as a crime against humanity.

113. Several representatives who favoured the retention of the condition of a request indicated that they would not agree with the creation of universal jurisdiction over the offences related to the illicit traffic in drugs. Some representatives further outlined the practical advantages of retaining the condition of a request. In some instances, confronted with an obstacle to extradite, both the requested and the requesting Parties could prefer to avoid prosecution and wait until extradition would become possible.

114. During the discussion, it appeared to one representative that all references to article 2 *bis* in article 4, paragraph 8, could in fact be deleted. In his view, the only relevant point was whether the Party had jurisdiction, whatever the ground might be; there was no reason to limit cases of jurisdiction to the cases provided for in article 2 *bis*. Paragraph 8(a)(ii) should also be deleted. Paragraph 8, the reading of which was complicated by all those references to article 2 *bis*, would be much clearer. This amendment would also affect paragraph 2 of article 2 *bis* which would no longer be necessary. This proposal met with the approval of many representatives.

115. One representative however pointed out that these deletions, associated with the deletion of paragraph 2 of article 2 *bis*, would upset the logic of paragraph 8. Once references to article 2 *bis* were deleted, the only ground for jurisdiction would be the domestic law of the Party. Some countries had no extraterritorial jurisdiction over nationals having committed an offence abroad; they would therefore dispense with the obligation to prosecute whereas other countries where domestic law had created such a jurisdiction would be obliged to prosecute. Reciprocity in the obligations of States Parties would thus disappear. Another representative supported this analysis of the implication of the suggested deletions. One of these representatives requested that the appropriate references to article 2 *bis* should be retained in paragraph 8(a)(i).

116. The opening words of the paragraph "Without prejudice to the exercise of any other jurisdiction", gave rise to a number of comments. In connection with the proposed deletion of all references to article 2 *bis*, it was pointed out that those opening words should also be deleted; since no more reference to specific grounds of jurisdiction was made, there was no longer a need to refer to "any other jurisdiction". Some representatives, however, favoured the retention of the opening words. One representative who objected to the deletion of all references to

article 2 *bis* considered that mention of article 2 *bis* could be reintroduced in the opening words which the would be kept and formulated as follows: "Without prejudice to the power of each Party to exercise jurisdiction in accordance with article 2 *bis* or with its domestic law". The latter reference to domestic law would also take care of the concern about the safeguard of the sovereign power of States to prosecute.

117. The Group agreed on a formulation of paragraph 8 reflecting the suggestions made in the course of the discussion, with square brackets, where appropriate, to indicate the particular points on which divergent positions could not be reconciled.

118. As regards paragraph 9, one representative expressed the view that it was contrary to the constitution of his country and should be deleted. The Group agreed to a suggestion that, as long as the fate of paragraph 7 (renumbered 6) left in square brackets was not decided, the reference in paragraph 9 to paragraph 7 should disappear and be substituted with a paraphrase of paragraph 7.

119. In paragraph 12 (11), one representative favoured the replacement of "shall consider" by "may consider", since his country was not in a position to agree with the transfer of persons sentenced to imprisonment. Several representatives pointed out that the obligation to consider entering into agreements was already couched in weak terms and that the optional formulation would make it useless. In the absence of agreement on this point, the Group decided to include both words in square brackets.

Article 5

120. Before entering in the consideration of article 5, the Group heard a statement from a representative regarding the proposal of his Government to introduce a new article 1 *bis* dealing with the scope of the Convention. The provisions of the proposed article, inspired from the substance of treaties already in force between his Government and other countries, emphasized the legal and sovereign equality of States, the principle of non-intervention in the domestic affairs, and the respect for the competence and territorial jurisdiction of the respective Parties. It should be clearly stated in the Convention that the application of its provisions would be subject to national laws and regulations and was not to prejudice the security, public policy or other essential interests of States Parties.

121. The Group took as a basis for discussion of article 5 the revised draft of that article annexed to the report of the Commission on Narcotic Drugs at its tenth special session, taking into account a redraft of the whole article presented by two Governments and amendments to some paragraphs proposed by one Government.

122. Several representatives stressed the importance of defining at the outset the scope of the article and suggested that its provisions should address mutual legal assistance in a specific manner so as to make it quite distinct from assistance of an administrative nature and other forms of cooperation envisaged in article 6. In this connection, it was deemed essential to include the word "legal" in the

title of the article. One representative observed that the content of article 5 went beyond legal assistance *strictu sensu* and that the title should be modified accordingly to include the transfer of criminal proceedings; alternatively, provisions dealing with the transfer of criminal proceedings could be moved to a new article dealing with that subject. The Group agreed that the title of article 5 should read "Mutual Legal Assistance".

123. With regard to paragraph 1, several representatives expressed their preference for the proposed redraft which, in their view, was clearer, more concise and positive in its formulation. The safeguard clauses in paragraph 1 of the initial revised draft should, whenever applicable, be moved to the respective paragraphs of the article.

124. Several other representatives stressed the importance of retaining safeguard clauses in the introductory sentence of paragraph 1 so as to specify that the provisions of the article would be implemented with due regard to the constitutional, legal and administrative systems of Parties as well as relevant treaties or arrangements. There was general agreement that application of the provisions of article 5 was to be subject to the national laws of the requested Party.

125. With regard to dual criminality, several representatives indicated that this requirement should not apply to all the cases of mutual legal assistance contemplated in article 5. The view was expressed that dual criminality should be considered in conjunction with safeguard clauses in other paragraphs of the article or included in paragraph 11 as one of the grounds of refusal of mutual legal assistance. Attention was drawn to the provision of paragraph 1 of article 1 of the European Convention on Mutual Assistance in Criminal Matters to the effect that it was sufficient, for the purpose of mutual assistance, that the punishment of the offence fell within the jurisdiction of the judicial authorities of the requesting Party. On the other hand, some representatives felt that the principle of dual criminality should be retained in paragraph 1 as it was considered a prerequisite for mutual legal assistance.

126. Some representatives were of the view that the provisions of paragraph 1 should indicate that Parties should provide one another mutual assistance "upon request"; some other representatives considered that it would be sufficient to state that such assistance should be provided "pursuant to this article".

127. In view of the divergent viewpoints, the Group decided to refer the further elaboration of paragraph 1 to an informal working group.

128. The informal working group agreed not to include a safeguard clause in paragraph 1 and to state therein that Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in any investigations, prosecutions and judicial proceedings in relation to a criminal offence established in accordance with article 2, paragraph 1. It was also agreed to include a new paragraph 2 containing alternative safeguard clauses. These were placed in square brackets as no agreement was

reached as to which should be retained. Paragraph 2 as a whole was also placed in square brackets.

129. The informal working group agreed to introduce as an additional ground for refusal of mutual legal assistance the case where the authorities of the requested Party would be prohibited by domestic law from carrying out a request made with regard to the same offence having been committed within the territory of that Party.

130. Another ground for refusal of mutual legal assistance was added to cover the case where the request would be contrary to the constitution, fundamental legal principles or to the law of the requested Party. However, since there was no general agreement with regard to the inclusion of these grounds for refusal of assistance, these words were placed in square brackets.

131. There was agreement to indicate that requests shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the law of the requested Party and where possible, in accordance with the requirements specified in the request.

132. The Group agreed to delete paragraph 2 of article 5 of the revised draft as its provisions, exhortative in nature, were considered superfluous.

133. Several representatives said that the introductory sentence of paragraph 3 should be phrased in a flexible manner so as not to be made mandatory; the word "may" should therefore be preferred to "shall". Moreover, the listing should not purport to be exhaustive but only indicative of some of the relevant modalities of assistance available to Parties. Some other representatives were of the view that in order to introduce a modicum of assurance as to what forms of assistance may be expected from Parties the provisions of paragraph 3 should be of a mandatory nature, and therefore preferred the use of "shall". Alternatively, it was proposed that paragraph 3 could include two lists dealing respectively with the modalities of assistance that are of a mandatory nature and those that are to be applied at the discretion of the Parties. Several other representatives were of the opinion that the introductory sentence should merely state that mutual assistance would include the items listed in the subsequent subparagraphs without making any reference as to whether the provisions of the paragraph were to be of a discretionary or mandatory nature.

134. In order to reflect the non-exhaustive character of the list and thereby extend the scope of assistance which the Parties may wish to envisage, the Group agreed to include in the article a new paragraph to the effect that Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

135. Several representatives considered that the wording of subparagraph 3(a) was ambiguous; the formula "taking evidence" was particularly open to misinterpretation. In their view, the provision should be reformulated so as to make it clear that it concerned statements to be taken for

evidentiary purposes. The Group agreed to refer the provision to the informal working group for reconsideration.

136. The Group agreed to retain subparagraphs 3(b) and (c) of the revised draft dealing respectively with effecting service of judicial documents and executing requests for searches and seizures.

137. Several representatives considered that subparagraph 3(d) should be deleted as the terms "sites" and "objects" were ambiguous. It was also indicated that the provision as such was unusual in existing Conventions; besides it was already covered in subparagraph 3(c). Some other representatives were of the view that it represented a useful form of mutual legal assistance particularly for reconstituting offences committed in the territory of other States or for verifying evidence based on the interview of witnesses. In order to make the provision more specific it was proposed that it should be amended so as to restrict its application to objects and sites related to the commission of the offences established under article 2, paragraph 1.

138. The Group agreed to delete subparagraph 3(e) as it duplicated other forms of assistance covered in paragraph 3.

139. Some representatives indicated that if the provisions of subparagraph 3(f) were to be retained they should be subject to a safeguard clause as some national laws prohibited certain categories of objects from leaving the national territory. One representative proposed to replace the word "exchanging" by "providing" and to specify that this form of assistance was for the purpose of prosecution of offences in article 2, paragraph 1. The Group agreed to refer the provision to the informal working group for further consideration.

140. One representative proposed to amend subparagraph 3(g) to make it conform with the requirements and conditions which he intended to introduce in paragraph 3 of article 3.

141. Several representatives advocated the deletion of the words "freezing and seizing" in subparagraph 3(h) for the reason that unlike article 3 where international co-operation was provided for the purpose of confiscation, this provision had the limited objective of facilitating investigation or prosecution. One representative, however, considered that those words should be retained as it was necessary, even for purposes of investigation or prosecution, to ensure that the proceeds are not dispersed.

142. Subparagraph 3(i) was deleted as its substance was incorporated in a new paragraph (see paragraph 134 above).

143. One representative proposed that subparagraph 3(j) should make it clear that those who may be called upon to assist investigations or participate in proceedings have consented to do so; alternatively it was suggested that in order to also cover cases where consent was not required the provision should be amended to indicate that it was applicable only to persons who were prepared to so assist.

144. Following informal discussions the Group agreed to delete subparagraph 3(j) and the proposed reformulation in subparagraphs 4(b) and (c) in the revised draft and include in a separate paragraph a provision to the effect that upon request, the Parties shall facilitate or encourage, to the extent consistent with national law and practice, the presence or availability of persons, including persons in custody, who consent or are prepared to assist in investigations or participate in proceedings. The words "consent" and "are prepared" were kept in square brackets as no agreement was reached regarding which of the terms should be retained. One representative announced that in due course he would propose, for insertion in another part of the draft Convention, a provision dealing with the safe conduct of persons in custody transferred for testimonial purposes.

145. The Group agreed to include in a separate article the proposed reformulation of subparagraph 4(a) to the effect that Parties shall give favourable consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences enumerated in article 2, paragraph 1, of this Convention in cases where such transfer is to be considered in the interest of a proper administration of justice. (See paragraphs 183-186 below.)

146. The Group agreed to take as a basis for discussion of paragraph 5 the corresponding provisions contained in the proposed redraft of the whole article which were found to be couched in clearer, more flexible language. According to the redraft, the paragraphs of article 5 concerning the designation of a responsible authority, the language of requests, the information to be contained therein, the modalities of execution and the grounds for refusal shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the procedural provisions of that treaty shall apply to the request unless the Parties agree to apply the above-mentioned paragraphs of article 5 in lieu thereof.

147. Some representatives considered that paragraph 5 should make it clear that the Convention did not supersede existing mutual legal assistance treaties. In that connection it was proposed that a provision be introduced along the lines of paragraph 2 of article 26 of the European Convention on Mutual Assistance in Criminal Matters stipulating that the provisions of article 5 shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contain or may contain clauses governing specific effects of mutual assistance in a given field. One representative considered that a more flexible formula would be preferable and proposed the inclusion of a new provision along the lines of article 11 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted at Montreal in 1971, to indicate that the provisions of article 5 shall not affect obligations under any other treaties, bilateral or multilateral, which govern, in whole or in part, mutual assistance in criminal matters.

148. One representative expressed the view that other mutual legal assistance treaties should supersede the provisions of the article only when their provisions were more favourable than those provided for by the new Convention.

149. Several representatives expressed their reservation regarding the applicability to requests made pursuant to article 5 of the paragraphs of the article to which reference was made in the proposed redraft; one representative considered that the provisions of paragraph 5 should apply to the article as a whole and not only to the said paragraphs.

150. Several representatives considered that reference to procedural provisions was limitative and proposed the deletion of the word "procedural". The Group agreed to place the word in square brackets as several other representatives considered that it should be retained.

151. The Group agreed to delete the words "to the request" so as to give a general scope to the provision.

152. Concerning paragraph 5 in square brackets in the revised draft providing for the designation of an authority to execute requests for mutual assistance, one representative expressed the opinion that, if mandatory, such a provision might upset existing networks of mutual assistance. In the opinion of other representatives this would, on the contrary, prove useful in giving clear guidance as to where requests should be sent.

153. Some representatives pointed out that the designation of a single authority did not address adequately the situation of Federal States or States where mutual assistance in criminal proceedings was within the purview of various jurisdictions. The possibility of establishing more than one authority should be provided for. If this was not expressly stipulated, it should at least be the understanding that the use of the word "authority" in the singular would not be construed as excluding such a possibility.

154. In response to the same concern, another representative suggested that mention should be made that the designated authority could delegate its power. It was observed, however, that in the case of a variety of jurisdictions of equal standing, the notion of delegation was inadequate. Some representatives also stressed that delegation of power was an internal matter and should not be touched upon in the Convention.

155. Consideration was given by the Group to the proposed redraft of the whole article stipulating that the designated authority could either execute requests or "transmit them to the competent authorities for execution". Some representatives expressed the view that the designated authority should always be the one competent for execution. Several other representatives stressed that the authority competent to execute might vary according to the request and be distinct from the designated authority. The transmission of requests should therefore be mentioned in the paragraph.

156. As regards paragraph 6 of the revised draft concerning channels of communication between designated authorities, several representatives favoured diplomatic channels for the communication of requests for assistance in criminal proceedings. The use of diplomatic channels would ensure that the request reached the competent service and would secure practical facilities for translation and mail servicing.

157. Other representatives considered that the obligation to communicate through diplomatic channels would have a hampering effect on cooperation. In their view, direct communication between designated authorities was far more expeditious and efficient; it was pointed out that small countries often had a limited network of diplomatic representation and that diplomatic channels did not function smoothly in all regions.

158. Several representatives considered that there was a need for flexibility in this matter. Parties should have an option as to channels of communication. It was also observed that Parties which favoured resorting to diplomatic channels could choose the Ministry of Foreign Affairs as their designated authority.

159. Several representatives considered that inspiration for a flexible solution could be found in article 35(e) of the 1961 Convention. This provision, if adjusted to the matter under consideration, would provide for an expeditious transmittal of requests to the designated bodies, without prejudice to the right of a Party to require that requests be sent through the diplomatic channel.

160. With regard to paragraph 7 of the revised draft, several representatives objected to the possibility of requests being made orally; the term "orally" in itself was considered ambiguous. Several representatives indicated that written requests were the standard practice. It was however pointed out by one observer that the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences, adopted at Nairobi in 1977, provided for the possibility of requests being made orally with a view to expediting the exchange of information between Parties in urgent circumstances. It was also pointed out that in certain circumstances, especially where other channels of communication between countries were slow, the use of oral communications could be the most expeditious manner of submitting requests for mutual legal assistance and that the Convention should not preclude this possibility.

161. Several representatives indicated that several conventions provided that requests had to be written in the language of the requested Party. It was pointed out that in the case of countries with several official languages, it would be appropriate for them to indicate the language in which requests had to be transmitted. To that effect, one representative stressed that the paragraph should stipulate that the language or languages to be used by the Parties shall be communicated to the Secretary-General. Another representative proposed that the request be solely in writing. The added requirement of a language acceptable to the requested Party could present conceivable problems, as when the requested Party opted for a language unknown to or not well understood by the requesting Party.

162. The Group considered the information that should be contained in requests for mutual legal assistance, taking as a basis for discussion the proposed redraft of paragraph 8.

163. With regard to subparagraph 8(a), the proposed redraft provided that the name of the competent authority

conducting the investigation or proceeding to which the request relates should be indicated in the request for mutual legal assistance. Some representatives suggested that in addition to the name of the competent authority, its functions should be specified so as to indicate in what capacity it was acting. Another representative expressed the view that the transmitting authority, which may be different from the competent authority, should also be identified.

164. One representative suggested that the authority conducting prosecution should also be mentioned. Another representative expressed reservation as regards the mentioning of the competent authority conducting investigation. It was suggested that the provision should be reduced to stating the name of the authority making the request and that the other items of information be moved to subparagraph 8(b).

165. The Group began consideration of the proposed redraft of subparagraph 8(b) stipulating that the subject-matter and nature of the investigation or proceeding to which the request relates, including a summary of the relevant facts, should be contained in the request. The Group agreed to include the nature of the prosecution as an additional information to be furnished. Some representatives considered that the inclusion of a summary of the relevant facts was not essential and would be cumbersome in practice. However one representative, on the basis of his country's experience, attached great importance to the inclusion of this item.

166. The Group agreed to refer the provisions of paragraph 8 to the informal working group for further consideration.

167. The Group considered paragraph 12 of article 5 of the revised draft and agreed to include it in the article.

168. With regard to paragraph 13 of the revised draft it was considered that the first part of the provision, to the effect that Parties shall carry out their obligations under the provisions of this article in conformity with any treaties of mutual legal assistance that may exist between them, should be deleted as its provisions were already covered in paragraphs 4 and 5 of the article. The Group agreed to retain the second part of the paragraph exhorting Parties to consider the possibility of concluding bilateral or regional agreements that would serve the purposes, and give practical effect to the provisions, of this article. One representative said that it was important that informal law enforcement assistance not be unintentionally constrained by the formalities of article 5 and proposed that language to this effect be included in the article.

169. One representative proposed that the following additional provisions, drawn from paragraph 4(b) of article 5 of the revised draft and article 12 of the European Convention on Mutual Assistance in Criminal Matters, be included in article 5 as paragraph 10 *ter*:

"A witness or expert, or a person, summoned to answer for acts forming the subject of proceedings against him, appearing before the authorities of the

requesting Party, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions prior to his departure from the territory of the requested Party. Such immunity shall cease when the witness or expert or person having had, for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained in the territory or, having left it, has returned."

170. Several representatives expressed support for the inclusion of this proposal which, in their opinion, would serve to encourage witnesses and experts to make themselves available to the requesting Party for the purpose of assisting in judicial proceedings.

171. With regard to the first sentence, several representatives objected to the use of the word "summoned" which, in their view, would make the paragraph inconsistent with the provisions of the article since they did not provide for an obligation for the transfer of witnesses or experts. It was stressed that the transfer of witnesses or experts should in any case be of a voluntary nature and subject to the consent of the persons concerned. The Group agreed to replace the word "summoned" by the words "who consent to give evidence in the requesting Party".

172. The provision of the first sentence was also amended to indicate that the transferred person shall not be prosecuted, detained, or "punished", and neither subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts, "omissions" and "convictions", "nor shall advantage be taken of the person for the purpose of civil proceedings".

173. Several representatives objected to the use of the word "immunity" in the second sentence as, in their view, the term was applicable only to consular personnel and diplomats. The Group agreed to replace the term by "safe conduct".

174. With regard to witnesses or experts that could have left the territory of the requesting Party after their presence was no longer required by the judicial authorities, the Group agreed to amend the provision to indicate that safe conduct should cease only when such persons have remained in the requesting State "voluntarily" or "returned on their own free will". It was proposed that the period of fifteen consecutive days should be changed to a month.

175. One representative expressed the view that the provision should not be too detailed and that the modalities of application should be left to the Parties.

176. While there was agreement on the general purpose of the article, the time limit did not permit an in-depth consideration of the substantive content and formulation of the proposal and of the amendments. The Group therefore agreed to place the paragraph in square brackets and submit it to the plenipotentiary conference for further consideration.

177. With regard to the location of the paragraph in article 5, several representatives expressed their preference for placing the provision immediately after paragraph 3 *ter* because of its relation with the substance of that paragraph. Other representatives considered that the additional paragraph should be governed by the provisions of paragraph 5 and proposed that it be placed somewhere between paragraphs 8 and 13.

178. No agreement was reached regarding the location of the paragraph. The Group decided to include it as an additional paragraph in article 5 and to leave to the plenipotentiary conference the final decision with regard to its location.

179. One representative proposed the inclusion of a new paragraph to the effect that the ordinary costs of executing a request shall be borne by the requested Party and that if expenses of an extraordinary nature were, or would be, required to fulfil the request, the Parties should consult to determine the terms and conditions under which the request should be executed. He also proposed for inclusion a provision to the effect that reasons shall be given for any refusal of mutual legal assistance. The Group agreed to include both proposals in article 5 and to leave to the plenipotentiary conference the further consideration of its content, formulation and location.

180. One representative requested that the second sentence of paragraph 5, which proposes to restrict the application of specific mutual legal assistance treaties, be placed in square brackets. Another representative requested that the last clause at the end of paragraph 5 reading "and unless the Parties agree to apply paragraphs 8 to 13 of this article in lieu thereof" should be placed in square brackets as it was unacceptable to his Government. Another representative proposed that paragraph 11(c) of the text should be placed in square brackets pending a more acceptable formulation. One representative proposed that the word "any" before the word "investigations" in paragraph 1 should be placed in square brackets and that further reference to "investigations" in the article could be deleted. Another representative proposed that the words "and by the competent authorities" in paragraph 9 be placed in square brackets as its meaning was ambiguous; in his view, the provision concerning competent authorities in this paragraph should be considered in conjunction with the ground for refusal of legal assistance specified in subparagraph 11(e). The Group agreed to these proposals.

181. Another representative considered that article 5 in its present formulation would not be acceptable if paragraphs 1-4 of article 6 were not subsequently amended. He also reiterated his reservation as regards subparagraph 3(g) of article 5, which in his view should be amended along the lines of the amendment he would propose to paragraph 3 of article 3.

182. With regard to the formulation and content of article 5 as a whole, there was general agreement that in contrast to article 4 where it was felt that the Group had gone as far as possible in reaching agreement on a compromise text, article 5 was in an interim stage because

time did not permit the Group to reconcile the divergent positions on a number of issues nor agree on a definitive formulation.

183. The Group considered the proposal to include a new article 5 *bis* to the effect that Parties shall give favourable consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences enumerated in article 2, paragraph 1 of the Convention in cases where such transfer is to be considered in the interests of a proper administration of justice. (See paragraph 145 above.)

184. Several representatives expressed their reservation, particularly on account of the ambiguous wording of the proposal. In this connection, it was proposed that the word "favourable" should be deleted. One representative was of the view that the proposal would be in violation to the constitution of his country and prejudice sovereignty.

185. One representative, supported by three others, while expressing reservation for the formulation of the provision, considered that it was relevant in the context of article 5 and proposed that it should be reformulated to indicate that Parties, at their discretion, may inform each other of proceedings as may contribute to a better administration of justice.

186. The Group agreed to submit article 5 *bis* in square brackets to the plenipotentiary conference for further consideration.

Article 6 *bis*

187. The Group considered the proposed additional article 6 *bis* referred to it by the Commission on Narcotic Drugs.

188. Many representatives expressed support for the inclusion of the new article in the Convention so as to meet the special concern of transit States, a great number of which were developing countries with limited resources. They emphasized that consideration of this article was definitely within the mandate of the Review Group.

189. Several representatives indicated that in their view the proposed additional article was superfluous as its concern was duly reflected in paragraph 5 of article 6. Several other representatives, in support for the inclusion of the proposed article 6 *bis* as a separate article, indicated that the provision of paragraph 5 of article 6 dealt with a specific form of technical assistance whereas those of article 6 *bis* covered other aspects of financial and economic assistance within the context of international co-operation which were necessary for fighting effectively the illicit traffic.

190. Several representatives considered that the discussion of the substantive content and formulation of the proposed article raised complex and sensitive issues which the Group, given the limited time at its disposal, would not be able to address in a satisfactory manner. Some representatives indicated that the inclusion of the proposed additional article in the Convention was a political decision which should be left to the Conference.

191. The Group agreed to place the proposed article in square brackets and submit it to the plenipotentiary conference for a final decision as to whether it warranted inclusion in the Convention. Two representatives expressed their reservation concerning this decision; they considered that the proposed additional article should not be given the same status as the other articles of the draft Convention which had been substantially considered by the open-ended intergovernmental expert group, the Commission on Narcotic Drugs and the Review Group. In their view the proposed article should be submitted to the Conference annexed with the other proposals not considered by the Group.

Review of the remaining articles and related draft texts

192. In connection with item 5 of the agenda, and as indicated in paragraph 17 above, several representatives made statements concerning articles 6 and 12.

193. Regarding article 6, one representative proposed that in order to take into account the combination of drug offences with economic offences, subparagraph 1(a) should be amended to indicate that the information to be exchanged between the competent national agencies and services should also include commercial and economic transactions.

194. With regard to article 12, many representatives reiterated the reservation of their Governments with regard to the phrase "beyond the external limits of the territorial sea", in paragraph 3, which the expert group had substituted for the phrase "and is on the high seas as defined in Part VII of the United Nations Convention on the Law of the Sea". In their view, the adoption of that wording could imply that third States would be attributed certain rights in the exclusive economic zone (EEZ) which were not contemplated in the United Nations Convention on the Law of the Sea, adopted in 1982, and upset the delicate balance between the rights of coastal States and third States in the EEZ. The formulation contained in the original draft of article 12 proposed by the Secretariat should, in their view, be retained.

195. Several representatives placed on record their interpretation of article 12, which in their view was not in conflict with the provisions of the United Nations Convention on the Law of the Sea. They considered that attempts to interpret the provisions of that Convention was beyond the scope of the mandate of the Review Group. The view was expressed that an in-depth consideration of the provisions of articles 6 and 12 was outside the mandate of the Review Group since, under agenda item 5, the Group was called upon to review the remaining articles only with a view to making those changes that may be necessary to achieve overall consistency of the draft text of the Convention. One representative stated that consideration of article 12 was within the mandate of the Review Group.

Draft final clauses

196. The Group took note of a proposal by the Commission of the European Communities to amend article I of the draft final clauses to the effect that regional economic

integration organizations which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Convention may become Parties to the Convention, and that references under the Convention to Parties, States or national services, shall be applicable to these organizations within the limits of their competences. The Group agreed to amend the text of article I of the draft final clauses as proposed.

Chapter IV

ORGANIZATION OF THE CONFERENCE

A. Rules of procedure

197. The Group considered the draft provisional rules of procedure for the plenipotentiary conference contained in documents DND/DCIT/10 and Corr.1-3 and DND/DCIT/16, on a rule-by-rule basis.

198. With regard to rule 4 the Group agreed to replace the first two sentences of rule 4 by a proposal, drawn from the rules of procedure of the International Conference on Drug Abuse and Illicit Trafficking, to the effect that a Credentials Committee of nine members shall be appointed at the beginning of the Conference and that its composition shall be based on that of the Credentials Committee of the General Assembly of the United Nations at its forty-third session. Rule 4 was approved as amended on the understanding that if a State is not present, the Conference shall replace that State by another State from the same regional group.

199. The Group agreed to replace the word "representatives" by the word "delegations" in rules 4 and 5.

200. The Group agreed to amend the first sentence in the first paragraph of rule 7 concerning the general powers of the President by inserting the words "promote general agreement, inform the General Committee on efforts to reach general agreement" before the words "put questions to the vote and announce decisions".

201. The Group agreed to amend rule 29 so as to indicate that the basic proposal for consideration by the Conference would consist of the draft articles of the Convention "submitted by the Commission on Narcotic Drugs at its tenth special session and those submitted as part of its report by the Review Group".

202. One representative requested clarification regarding the role of the Drafting Committee as stipulated in rule 49. It was explained that the role of the Drafting Committee, as in previous United Nations conferences, would be of an editorial nature and that its primary task would be to ensure linguistic concordance between the texts of the draft articles of the Convention. Following general discussion the Group agreed to retain rule 49 with the understanding that the Drafting Committee will not be concerned with matters of substance. The Group also endorsed the proposal of one representative that the

President of the Conference should, at the appropriate time, spell out the functions of the Drafting Committee to the Conference.

203. One representative considered that rule 50 should be amended so as to explicitly state that each committee, subcommittee and working group shall elect its own officers. Following discussion of this matter, the Group agreed to retain the rule as drafted so as not to limit the prerogatives of the Conference with the understanding that each committee, subcommittee and working group should be given the possibility to elect their own officers.

204. Several representatives expressed their concern with regard to rules 55 and 56 concerning the languages of the Conference and interpretation respectively. In their view, facilities for interpretation and translation in the six official languages of the United Nations should be provided to all the bodies of the Conference. It was explained by the Secretariat that in accordance with the financial arrangements for the Conference, approved by the Economic and Social Council, interpretation in all the six official languages would be available for two meetings held simultaneously. The Group took note of the financial implications involved and expressed the wish that interpretation in the languages of the Conference be provided for all official meetings.

205. The Group agreed to amend the first sentence of rule 59 to indicate that the meetings of the Committee of the Whole shall also be held in public and rule 60 to indicate that, as a general rule, meetings of the General Committee and the Drafting Committee shall also be held in private. The titles of rules 59 and 60 were accordingly modified to read "Plenary meetings and meetings of the Committee of the Whole" and "Other meetings". One representative, while not objecting to the consensus, indicated his preference for rules 59 and 60 as originally drafted.

206. One representative considered that in view of the special and sensitive nature of the subject-matter of the Conference, rule 61, concerning communiqués on private meetings, should be changed so that only the President of the Conference, and not the chairman of the organ concerned, would have the authority to issue a communiqué to the press at the close of a private meeting. The Group agreed to this proposal and rule 61 was amended accordingly.

207. The Group agreed to recommend to the Conference the adoption of the draft provisional rules of procedure as amended.

B. Other organizational matters

208. The Group considered organizational matters relating to the Conference on the basis of a note by the Secretariat contained in document DND/DCIT/14 and the draft provisional agenda of the Conference contained in document DND/DCIT/13.

209. The Group also considered draft recommendations on the organization of work of the Conference elaborated during informal consultations between several representatives.

210. The Group adopted the proposed recommendations to be submitted to the Conference. One representative expressed his reservation with the manner in which the substantive work on the draft Convention had been distributed between subcommittees, committees and the Committee of the Whole in the proposed recommendations. (For the text of recommendations approved by the Review Group, see chapter I above.)

[. . .]

ANNEX II

Revised text of the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*

DRAFT PREAMBLE**

The Parties,

Deeply concerned by the magnitude of and upward trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances which pose a serious threat to the health and welfare of human beings, and adversely affect the economic, cultural and political foundations of society,

Observing the links between drug trafficking and other associated organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing that drug trafficking is an international criminal activity demanding urgent attention and maximum priority,

Aware that drug trafficking generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of Government, legitimate commercial and financial business, and society at all its levels,

Desiring to deprive drug traffickers of the proceeds of their criminal activity and thereby eliminate their main incentive for engaging in drug trafficking,

Considering that measures of supervision are necessary for substances, including precursors, chemicals and solvents, the ready availability of which has led to an increase in the clandestine production of narcotic drugs and psychotropic substances falling under the provisions of the Single Convention on Narcotic Drugs, 1953, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1953, and the 1971 Convention on Psychotropic Substances,

Noting that the increased smuggling of drugs through regular post office channels calls for strengthening the existing international conventions which prohibit the illicit carriage of drugs in the mail,

*Submitted to the Conference as the basic proposal.

**Forwarded to the Conference by the Commission on Narcotic Drugs at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 137-141).

Desiring to improve international cooperation in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea,

Recognizing that eradication of drug trafficking is the collective responsibility of all States,

Aware of the necessity of dealing with drug trafficking by effective coordinated action within the framework of international cooperation,

Acknowledging the competence of the United Nations in the field of drug control and desirous that the international organs concerned with drug control should be within the framework of that Organization,

Reaffirming the guiding principles of existing drug control treaties and the system of drug control which they embody,

Recognizing the need to reinforce and complement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude, extent and complexity of the illicit traffic in narcotic drugs and psychotropic substances and its grave consequences,

Desiring to conclude an effective and operative international convention against the illicit traffic in narcotic drugs and psychotropic substances which considers the various aspects of the problem as a whole, in particular those not envisaged in the existing drug control treaties,

Hereby agree as follows:

DRAFT SUBSTANTIVE ARTICLES

Article 1*

Except where otherwise expressly indicated, or where the context otherwise requires, the following terms in this Convention have the meanings given below:**

"Board" means the International Narcotics Control Board;

"Commercial carrier" means any person or [public or private] entity engaged in transporting persons, goods [or mails] for remuneration, hire [or other forms of reward];

"Commission" means the Commission on Narcotic Drugs of the Council;

"Controlled delivery" means the investigative technique of allowing illicit consignments of narcotic drugs and psychotropic substances [or substances in List A and List B] [or consignments which are intercepted by competent authorities and allowed to continue with the narcotic drugs or psychotropic substances replaced by innocuous substances], to pass out, through or into

the territory of one or more countries, with the knowledge and under surveillance of their competent authorities, with a view to identifying persons involved in illicit traffic and to taking legal action against them, [if permitted by the national laws and regulations of a State Party];

"Council" means the Economic and Social Council of the United Nations;

"Illicit traffic" means [includes] [*inter alia*] the [sowing] cultivation, [harvesting] production, [fabrication] manufacture, extraction, preparation, [conditioning] offering, offering for sale, distribution, [possession] [supply] [storage] purchase, [acquisition] sale, [prescription] delivery on any terms whatsoever, brokerage, dispatch, dispatch through the mails, dispatch in transit, transport, importation and exportation [and the traffic in any other form] of any narcotic drugs or psychotropic substances contrary to the provisions of the Single Convention on Narcotic Drugs, 1961, of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and of the Convention of Psychotropic Substances, 1971. [Illicit traffic also includes the possession of any narcotic drugs or psychotropic substances for the purpose of any of the foregoing activities] [as well as the consumption or improper use of such substances]. [It also includes traffic in substances in List A and List B contrary to article 8 of the present Convention.] The organization, management, financing or facilitating of the aforementioned operations or activities are also considered as illicit traffic for the purposes of this Convention.

Title

Variant A:

USE OF TERMS

Variant B:

DEFINITIONS

Concealment*

Variant A:

"Laundering" means the concealment or disguise of the true nature, source, disposition, movement or ownership of proceeds and includes the movement or conversion of proceeds by electronic transmission;

Variant B:

"Concealment" means the concealment or disguise of the nature, source, disposition, movement or ownership of property and includes the movement or conversion of property by electronic transmission or by many other means;

Controlled substances**

Variant A:

"Forfeiture" means the deprivation of proceeds by court order;

Freezing

Variant A:

"Freezing" means prohibiting the transfer, conversion, disposition or movement of proceeds by order of a court or other appropriate authority;

Variant B:

"Freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property;

*The Review Group considered the original draft article 1, entitled "Use of terms" as well as the draft entitled "Definitions" proposed by the informal working group at the thirty-second session of the Commission. In the course of its discussions, the Review Group reached consensus on certain definitions and examined others in an in-depth manner. The results of those deliberations (see paragraphs 14 and 16-45 of the present document) are set out under article 1 without an indication of a title as there was no agreement on the subject. The remaining definitions proposed in the Secretariat draft and the draft of the informal working group are reproduced as variant A (Secretariat) and variant B (informal working group) on the following pages.

**Introductory sentence not discussed at the Review Group but same text used in both variant A and variant B.

*This corresponds to the term "laundering" used in variant A and both terms are accordingly listed together under this heading.

**Deleted following review of article 8.

*Legitimate third party**Variant A:*

"Legitimate third party" means any person, corporation or other legal entity who, acting bona fide and without knowledge of incriminating circumstances, has lawfully acquired the right to own, use, control or possess proceeds;

*List A and List B**Variants A and B:*

"List A" and "List B" mean the correspondingly designated lists of substances annexed to this Convention, as amended from time to time in accordance with article 8 of this Convention;

*Party**Variant A:*

"Party" means a State that has consented to be bound by this Convention and for which this Convention is in force.

*Property***Variant A:*

"Proceeds" means property of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such property;

Variant B:

"Property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such property or assets;

*Secretary-General**Variants A and B:*

"Secretary-General" means the Secretary-General of the United Nations;

*Seizure**Variant A:*

"Seizure" means assuming custody or control of proceeds as directed by order of a court or other appropriate authority;

Variant B:

"Seizure" means assuming custody or control of property by a competent authority;

*Specific chemical****Tracing**Variant A:*

"Tracing" means determining the true nature, source, disposition, movement or ownership of proceeds;

Variant B:

"Tracing" means determining the nature, source, disposition, movement or ownership of property;

*Transit State**Variant A:*

"Transit State" means a State which, while not being a major producer, manufacturer or consumer of narcotic drugs or

psychotropic substances, is nevertheless adversely affected by the illicit traffic in transit through its territory.

[Article 1 bis]*

SCOPE OF THE CONVENTION

In full compliance with the principles of international law regarding legal equality and sovereign equality of States, as well as the principle of non-intervention in domestic affairs which are essentially within the exclusive competence of States, the Parties agree that:

1. This Convention constitutes an instrument of international cooperation, aimed at ensuring maximum effectiveness in the struggle of the States Parties against the illicit traffic in narcotic drugs and psychotropic substances, in all aspects of the problem as a whole, in all cases within the most strict respect for, and in full compliance with, the limits set by the provisions of the respective internal legal system of each State Party, and in the framework of applicable treaties in force on the matter.

2. Nothing in this Convention empowers, in any way whatsoever, the authorities of one of the States Parties to undertake, to attempt to undertake or to exercise pressure in order to be allowed, in the territorial jurisdiction of any of the other States Parties, the exercise and performance of functions whose jurisdiction or competence are exclusively reserved to the authorities of each of those other States Parties by their respective national laws and regulations.

3. This Convention in no case implies and cannot be interpreted in the sense that, in order to comply with it, a State Party has undertaken, by virtue of its provisions, to take measures itself or to authorize measures in its territorial jurisdiction which in any way exceed its legal jurisdiction or competence, or which in any other manner are not expressly permitted by its legal provisions in force, or which may, in the judgement of that State Party, prejudice its security, public order or any other essential interest.

4. In conformity with the above paragraphs, none of the provisions of this Convention shall be invoked or utilized as a pretext to attempt to go beyond the precise limits of its scope, in contravention of the provisions of this article.]

*Article 2***

OFFENCES AND SANCTIONS

1. Each Party shall adopt such measures as may be necessary to establish as offences under its criminal law, when committed intentionally:

- (a) (i) Illicit traffic;
- (ii) Manufacture or distribution of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, knowing that they are to be used for that purpose;

*New article proposed by the delegation of Mexico at the meeting of the Review Group (see paragraphs 14, 46 and 120 of the present document).

**Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 69-76) through the Review Group, which considered the penultimate paragraph (see paragraphs 14 and 47-53 of the present document).

*This corresponds to the term "proceeds" used in variant A and both terms are accordingly listed together under this heading.

**Deleted following review of article 8.

- (iii) Concealment, disguise or conversion of the nature, source, disposition, movement or ownership of property, knowing that such property is derived from illicit traffic;
- (b) Subject to its constitutional limitations, legal system and domestic law,
 - (i) Acquisition, possession or use of property knowing that such property is derived from illicit traffic;
 - (ii) Possession of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, knowing that they are being or to be used for that purpose;
 - (iii) Participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting and counselling the commission of any offences under subparagraphs (a)(i), (ii) and (iii) and under (i) and (ii) of this paragraph.

2. (a) Each Party shall make the commission of the offences set forth in paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and forfeiture.

(b) Parties may provide, in addition to conviction or punishment, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

(c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

3. The Parties shall ensure that their courts can take into account factual circumstances which may make the commission of the offences set forth in paragraph 1 particularly serious, such as:

(a) The involvement in the offence of an organized criminal group to which the offender belongs;

(b) The involvement of the offender in other international organized criminal activities;

(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;

(d) The use of firearms or violence;

(e) The fact that the offender holds a public office and that the offence is connected with the office in question;

(f) The victimization or use of minors;

(g) Prior conviction, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

4. The Parties shall bear in mind the serious nature of the offences enumerated in paragraph 1 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

5. The Parties shall endeavour to establish, where appropriate, adequate provisions governing the statute of limitations applicable to the offences enumerated in paragraph 1 of this article.

6. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence specified in paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.

7. [For the purpose of cooperation between Parties under this Convention, [including, in particular, cooperation under articles 3, 4, 5 and 6,] offences established in accordance with this article shall not be considered as political [or fiscal] offences or regarded as politically motivated.] [The application of this provision shall be without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.] [In any case, this provision shall not be applied in prejudice to the institution of the right of asylum in conformity with international law.]

8. Nothing contained in this article shall affect the principle that the description of the offences to which it refers is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 2 bis*

JURISDICTION

1. Each Party

(a) Shall take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

(i) The offence is committed in its territory;

(ii) The offence is committed on board a ship or aircraft which is registered under its laws at the time the offence is committed;

(b) May take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

(i) The offence is committed by a national, or by a person who has his habitual residence in its territory, [if in both cases the alleged offender is located in its territory];

(ii) The offence is committed on board a ship which that Party has received prior permission to seize pursuant to article 12, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 5 and 7 of that article;

[(iii) The offence is one of those listed in article 2, paragraph 1, subparagraph (b)(iii) and is committed outside its territory [as a preparatory act] with a view to the commission, within its territory, of an offence set forth in article 2, paragraph 1.]

[2. Each Party:

[(a) Shall also take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

(i) That the offence has been committed in its territory or on board a ship or aircraft which was registered under its laws at the time the offence was committed, or

(ii) That the offence has been committed by a national or by a person who has his habitual residence in its territory [if in both cases the alleged offender is located in its territory];

*Forwarded to the Conference after further study by the Review Group (see paragraphs 14 and 54-62 of the present document), in accordance with the request of the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 77-79).

[(iii) That the alleged offender is facing the death penalty in the requesting State;]

[(iii) That the penalty imposed in the requesting State would be more severe than in the requested State;]]

[(b) May also take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on any other ground than those specified in subparagraph (a) above.]]

3. This Convention does not exclude the exercise of any criminal jurisdiction established in accordance with domestic law.

Article 3*

1. Proceeds, narcotic drugs and psychotropic substances, materials and equipment, and other instrumentalities derived from or used in offences established in accordance with article 2, paragraph 1, shall be liable to confiscation. To that end, each Party shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences established in accordance with article 2, paragraph 1, or property the value of which corresponds to that of such proceeds;

(b) Narcotic drugs and psychotropic substances used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1;

(c) Materials and equipment used in or intended for use in the illicit production, processing or manufacture of such drugs or substances;

(d) Other instrumentalities used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1.

2. Each Party shall also adopt such measures as may be necessary to enable it to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of the eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

- (i) Seek an order of confiscation from its competent authorities and, if such an order is granted, give effect to it; or
- (ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1, as it relates to proceeds,

property, instrumentalities or any other things referred to in paragraph 1, situated in the territory of the requested Party.

(b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, the requested Party shall take measures to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 for the purpose of an eventual confiscation to be ordered either in the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, in the requested Party.

[(c) Any decision or action taken by the requested Party pursuant to subparagraphs (a) and (b) of this paragraph shall be in accordance with and subject to the conditions of its domestic law and any bilateral or multilateral treaty, agreement or arrangement to which it is bound in relation to the requesting Party.]

(d) The provisions of article 5, paragraphs ["relevant provisions"] are applicable *mutatis mutandis*. In addition to the information listed in paragraph [8] of article 5, requests made pursuant to the present article shall contain the following:

- (i) In the case of a request pertaining to subparagraph (a)(i), a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
- (ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by a court of the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested.
- (iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

(e) Each Party shall, through a notification to the Secretary-General of the United Nations, indicate which procedure, provided for in subparagraph (a), it will apply when acting at the request of other Parties pursuant to this article.

(f) [A Party may elect to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty.] [In such a case, a Party may consider this Convention as the necessary treaty basis.] The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to carry out or to enhance the effectiveness of international cooperation pursuant to this article.

5. (a) Proceeds or property that have been confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its law and administrative procedures.

(b) When acting on the request of another Party in accordance with this article, the Parties may give special consideration to concluding agreements on:

- (i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to inter-governmental bodies specializing in the fight against the illicit traffic in and abuse of narcotic drugs and psychotropic substances;
- (ii) Sharing, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale

*Forwarded to the Conference after further consideration by the Review Group (see paragraphs 14 and 63-83 of the present document), in accordance with the request of the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 80-87).

of such proceeds or property, with other Parties, in a manner provided by its law, administrative procedure or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any seizure or freezing powers, be liable to confiscation up to the value corresponding to the assessed value of the intermingled proceeds.

(b) If proceeds have been transformed or converted into other property such other property shall be liable to measures referred to in this article in lieu of the proceeds.

(c) Income or other benefits [clearly identified as being] derived from:

- (i) Proceeds;
- (ii) Property into which proceeds have been transformed or converted; or
- (iii) Property with which proceeds have been intermingled;

[shall] may also be liable to such measures.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the legitimacy of proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in conformity with and under the conditions established by the domestic law of a Party.

Article 4*

1. This article shall apply to the offences established by the Parties [concerned] in accordance with paragraph 1 of article 2 of this Convention.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it [may] [shall] consider this Convention as the legal basis for extradition in respect of any offence to which this article applies.

4. Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. [Except as otherwise provided in this article,] extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. [Subject to its constitutional limitations, legal system and domestic law,] Parties shall facilitate the extradition of persons accused or convicted of offences established in accordance with article 2, paragraph 1. [To this end, a request for extradition by another Party with respect to any of the offences to which this article applies shall not be refused on the ground that the person sought is a national of, or has his habitual residence in the territory of, the requested Party [, except in cases where refusal is required by the constitution or the [domestic legal system] [fundamental domestic law] [domestic law] of the requested Party.] A Party may elect or decline to consider this Convention as satisfying a requirement under its constitution or [domestic legal system] [fundamental domestic law] [domestic law] that extradition of nationals, or of persons having their habitual residence in its territory, be subject to the existence of a treaty. [If in regard to the persons referred to in this paragraph the national legislation of the requested Party grants for their extradition a discretionary power to its competent authorities, such Party will endeavour, as far as possible, to see such power exercised, taking into account the object and purpose of this Convention.]

7. Parties shall endeavour to minimize procedural and evidentiary requirements for extradition with respect to offences established in accordance with article 2, paragraph 1. To that end, a valid arrest warrant or a final judgement of the requesting Party, together with an outline of the facts constituting the alleged offence, may be considered by Parties as sufficient to support a request for extradition.

8. (a) [Without prejudice to the exercise of any other jurisdiction,] [Without prejudice to the power of each Party to exercise jurisdiction in accordance with article 2 *bis* or with its domestic law,] the Party in whose territory the alleged offender is present shall [, at the request of the Party requesting extradition,] submit the case without undue delay to its competent authorities for the purpose of prosecution if it does not extradite him and if the offence is one in respect of which that Party [has jurisdiction] [can exercise jurisdiction] in accordance with paragraph 2(a) of article 2 *bis*;

(b) The competent authorities shall take their decision in the same manner as in the case of any offence of [a similar] [the same] nature under the law of the requested Party.

9. [If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party or has his habitual residence in its territory, the requested Party shall, if its law so permits and upon application of the requesting Party, consider the enforcement of the sentence, or the remainder thereof, which has been imposed under the law of the requesting Party. The enforcement of the sentence thus transferred shall be subject to the other conditions provided for by the law of the requested Party.]

10. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

11. The Parties [shall] [may] consider entering into bilateral or multilateral agreements, whether ad hoc or general, to facilitate the transfer of persons sentenced to imprisonment for offences to which this article applies, to their country of origin, in order that they may complete their sentences there.

*Forwarded to the Conference after further review by the Review Group (see paragraphs 14 and 84-119 of the present document), in accordance with the request of the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 88-90).

Article 5*

MUTUAL LEGAL ASSISTANCE

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in any investigations, prosecutions and judicial proceedings in relation to a criminal offence established in accordance with article 2, paragraph 1.

2. [Mutual legal assistance, pursuant to this article, will be provided taking due account of the Constitution, [fundamental legal principles] [legal systems] [administrative systems] of the requested Party].

3. [Mutual legal assistance provided for in this article refers to] [Requests for mutual legal assistance, pursuant to this article, may be made for any of the following purposes] [Requests for any of the following forms of mutual legal assistance shall be considered pursuant to this article]:

- [(a) Taking evidence or statements from persons;]
- [(b) Effecting service of judicial documents;]
- [(c) Executing requests for searches and seizures;]
- [(d) Examining objects and sites related to the commission of offences established under article 2, paragraph 1;]
- [(e) Providing information and objects [related to the commission of offences established under article 2, paragraph 1;]]
- [(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate and business records;]
- [(g) Identifying or tracing proceeds, property, instrumentalities or other things derived from or used in the offences established in accordance with article 2, paragraph 1, [in order to facilitate investigation or prosecution] [for evidentiary purposes].]

3 *bis*. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

3 *ter*. Upon request, the Parties shall facilitate or encourage, to the extent consistent with national law and practice, the presence or availability of persons, including persons in custody, who [consent] [are prepared] to assist in investigations or participate in proceedings.

4. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters. [The Parties, including their competent authorities, may provide for assistance, including those types described in paragraph 3, pursuant to other treaties, agreements, arrangements or practices.]

5. Paragraphs 8 to 13 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. [If these Parties are bound by such a treaty, the [procedural] provisions of that treaty shall apply provided that they supplement the principles contained in paragraphs 8 to 13 of this article or facilitate their application [and unless the Parties agree to apply paragraphs 8 to 13 of this article in lieu thereof].]

6. Parties shall designate an authority [or authorities] which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority [or the authorities] designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.

7. Requests shall be made in writing [in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be also notified to the Secretary-General]. [In urgent circumstances, and if acceptable to the requested Party, such requests may be made orally, but shall be confirmed in writing forthwith.]

8. Requests for mutual legal assistance shall contain:

- (a) The name and function of the authority making the request;
- (b) The subject-matter and nature of the [investigation,] prosecution or proceeding to which the request relates, [including a summary of the relevant facts,] and the name and the functions of the authority conducting such [investigation,] prosecution or proceeding;
- (c) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;
- (d) Where necessary and possible, the identity, location and nationality of the person concerned.

8 *bis*. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

9. A request shall be executed in accordance with the domestic law [, and by the competent authorities,] of the requested Party and, to the extent not contrary to the law of the requested Party and where possible, in accordance with the procedures specified in the request.

10. [If the requested Party so requires,] the requesting Party shall not disclose or use information or evidence furnished by the requested Party for purposes other than those stated in the request without the prior consent of the requested Party.

10 *bis*. The requesting Party may require that the requested Party keep confidential the fact and substance of the request except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

11. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

[(c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out a request made with regard to the same offence having been committed within its territory;]

(d) If it would be contrary to the [Constitution, fundamental legal principles or] to the law of the requested Party relating to mutual legal assistance for the request to be granted;

*Forwarded to the Conference after consideration by the Review Group (see paragraphs 14 and 120-182 of the present document), in accordance with the request of the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 91-96).

[(e) If the execution of the request would require that authorities of the requesting Party undertake functions or actions, in the territorial jurisdiction of the requested Party, which are exclusively reserved to the competent authorities of the requested Party in accordance with its national legislation.]

12. Mutual legal assistance may be postponed on the ground that it interferes with an ongoing investigation or prosecution. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can be given subject to such terms and conditions as the requested Party deems necessary.

13. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or regional agreements that would serve the purposes, and give practical effect to the provisions of, this article.

Additional paragraphs

[A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party, nor shall advantage be taken of the person for the purpose of civil proceedings. Such safe conduct shall cease when the witness or expert or person having had, for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.]

The ordinary costs of executing a request shall be borne by the requested Party. If expenses of an extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed.

Reasons shall be given for any refusal of mutual assistance.

[Article 5 bis]*

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences enumerated in article 2, paragraph 1, of this Convention in cases where such transfer is to be considered in the interest of a proper administration of justice.]

*Article 6***

OTHER FORMS OF COOPERATION AND TRAINING

1. The Parties shall cooperate closely with each other, consistent with their respective national legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the illicit traffic. They shall, in particular:

*New article formulated by the Review Group from part of article 5 (see paragraphs 14, 145 and 183-186 of the present document).

**Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 97-98) after having been referred to the Review Group in connection with its consideration of article 5 (see paragraphs 14, 17 and 193 of the present document).

(a) Establish and maintain channels of communication between competent national agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of illicit traffic, including, if the Parties concerned deem it appropriate, links with other criminal activities.

(b) Cooperate with one another in conducting inquiries with respect to the illicit traffic at the international level, the identification, whereabouts and activities of traffickers, and the movement of property that may be derived from or used in the illicit traffic.

(c) In appropriate cases and if not contrary to national law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party on whose territory the operation is to take place. In all such cases the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected.

(d) Transfer, when appropriate, samples of controlled substances for analytical or investigative purposes.

2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement, customs and other personnel charged with the suppression of the illicit traffic. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection and suppression of the illicit traffic;

(b) Routes and techniques used by traffickers, particularly in transit States, and appropriate countermeasures;

(c) Monitoring of the import and export of controlled substances;

(d) Detection and monitoring of the flow of property derived from or used in the illicit traffic;

(e) Methods used for concealment of such property;

(f) Collection of evidence;

(g) Control techniques in free trade zones and free ports;

(h) Modern law enforcement techniques.

3. The Parties shall assist each other to plan and implement training programmes designed to share expertise in the areas referred to in paragraph 2 and, to this end, shall also, when appropriate, use regional and international conferences and seminars to stimulate cooperation and allow discussion on problems of mutual concern, including the special problems and needs of transit States.

4. The Parties shall facilitate effective coordination between their competent national agencies and services and, in that context, shall consider, where appropriate, allowing the posting of liaison officers from other Parties within their borders, on the basis of bilateral or other agreements or arrangements, and promoting the exchange of personnel and other experts on the illicit traffic.

5. The Parties shall endeavour, directly or through competent international organizations, to establish programmes of technical cooperation for the benefit of Parties, with due regard to the special problems and needs of those which are transit States, to improve channels of communication and to provide technical aid when requested and able to do so.

[Article 6 bis]*

INTERNATIONAL COOPERATION AND ASSISTANCE FOR TRANSIT STATES

1. Parties shall undertake, directly or through competent international or regional organizations, to assist and support transit States through a programme of technical cooperation and shall share appropriately the cost incurred by transit States, when requested, on drug interdiction activities.

2. The Parties shall also undertake, directly or through competent international or regional organizations, to provide financial assistance to augment the enforcement resources and infrastructure needed for effective prevention of transit traffic.]

*Article 7***

CONTROLLED DELIVERY

1. Consistent with the basic principles of their respective national legal systems, the Parties shall take the necessary measures to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in illicit traffic and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

*Article 8****MEASURES TO MONITOR SUBSTANCES FREQUENTLY USED IN THE
ILLCIT PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS
OR PSYCHOTROPIC SUBSTANCES

1. Parties shall take the measures they deem appropriate to prevent diversion of substances in List A and in List B, used for the purpose of illicit processing or manufacture of narcotic drugs or psychotropic substances, and shall cooperate with each other to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in List A or in List B, it shall notify the Secretary-General and furnish him with the information in support of that notification.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, and all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit use and for

the illicit processing or manufacture of narcotic drugs or psychotropic substances, finds:

(a) That the substance is frequently used in the illicit processing or manufacture of a narcotic drug or psychotropic substance, and

(b) That the volume and extent of the illicit processing or manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

the Board shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either List A or List B on both licit use and illicit processing or manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by Parties and the comments and recommendation of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a vote of two-thirds majority of its members to place a substance in List A or in List B.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication.

7. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days after the date of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based.

(b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit comments within 90 days. All comments received shall be submitted to the Council for consideration.

(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission and to the Board.

8. The procedure described in paragraphs 2-7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from List A or from List B, or the transfer of a substance from one list to the other.

9. Each Party shall, with respect to substances in List A and List B, take the following measures:

(a) Establish and maintain a system to monitor international trade in substances in List A and List B in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close cooperation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent national authorities of suspicious orders and transactions;

(b) Provide for the seizure of any substance in List A or in List B if there is sufficient evidence that it is for use in the illicit processing or manufacture of a narcotic drug or psychotropic substance;

(c) Notify, as soon as possible, the competent national authorities and services of the Parties concerned if there is reason

*Forwarded to the Conference by the Review Group (see paragraphs 14 and 187-191 of the present document), to which it had been referred by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, para. 99).

**Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 35-38).

***Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 39-50).

to believe that the import, export or transit of a substance in List A or in List B is destined for the illicit processing or manufacture of narcotic drugs or psychotropic substances, including in particular information on the means of payment and on any other essential elements which led to that belief;

(d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, bills of lading, customs documents and other shipping documents shall include the names as stated in List A or in List B of the substances being imported or exported, the quantity being imported or exported, and the name and address of the importer, the exporter and [, when available,] the consignee;

(e) Ensure that documents referred to in subparagraph (d) are maintained for a period of not less than two years and may be made available for inspection by the competent national authorities.

10. (a) In addition to the provisions of paragraph 9, each Party from whose territory a substance in List A is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

- (i) The name and address of the exporter and importer;
- (ii) The designation of the substance in List A;
- (iii) The quantity of the substance exported;
- (iv) The presumed point of entry and estimated date of dispatch.

(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

11. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

(a) The amounts seized of substances in List A and in List B, and, when known, their origin;

(b) Any substance not included in List A or List B which is identified as having been used in illicit processing or manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

(c) Methods of diversion and illicit processing or manufacture.

12. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Lists A and B.

13. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in List A or List B that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means in sufficient quantity to permit significant illicit processing or manufacture of a narcotic drug or a psychotropic substance.

Tentative lists

(Further definition of substances concerning salts etc. to be made)

List A

Ephedrine
Ergometrine
Ergotamine
Lysergic acid
Phenyl-2-propanone
Pseudo-ephedrine

List B

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Phenylacetic acid
Piperidine

*Article 9**

MATERIALS AND EQUIPMENT

The Parties shall cooperate to suppress trade in materials and equipment for illicit manufacture of narcotic drugs and psychotropic substances.

*Article 10***

MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILLEGITIMATELY AND TO ELIMINATE ILLEGITIMATE DEMAND FOR DRUGS

1. Each Party shall take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing psychotropic or narcotic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. Such measures shall not be less stringent than the requirements applicable to the cultivation of narcotic plants under the provisions of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961. The measures adopted shall respect fundamental human rights and shall take due account of traditional domestic uses of such plants as well as the protection of the environment.

2. The Parties may cooperate to increase the effectiveness of eradication efforts. Such cooperation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. Parties may agree on any other appropriate measures of cooperation. They shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication. Parties with common frontiers shall seek to cooperate in eradication programmes in areas along those frontiers.

3. The Parties shall adopt appropriate measures aimed at eliminating illicit demand for drugs, with a view to eliminating the financial incentives for illicit traffic.

*Article 11****

COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the illicit traffic; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for illicit traffic. Such precautions may include:

(a) If the commercial carrier has its principal place of business within the territory of the Party:

*Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 51-52).

**Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 34).

***Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 53-55).

- (i) Training of personnel to identify suspicious shipments or persons;
- (ii) Promotion of employee integrity.
- (b) If the carrier is operating within the territory of the Party:
 - (i) Provision of cargo manifests in advance, when possible;
 - (ii) Use of tamper-resistant individually verifiable seals on containers;
 - (iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious incidents that may be related to illicit trafficking.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas cooperate, with a view to preventing unauthorized access to means of transport and cargo, and implementing appropriate security measures.

Article 11 bis*

LABELLING AND COMMERCIAL DOCUMENTS

1. Each Party shall require that exports of narcotic drugs and psychotropic substances be properly documented. Commercial documents such as invoices, cargo manifests, bills of lading, customs documents and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as designated in their respective schedules, the quantity being exported, and the name and address of the importer, the exporter and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported are not mislabelled.

Article 12**

ILLCIT TRAFFIC BY SEA

1. The Parties shall cooperate to the fullest extent possible to suppress the illicit traffic by sea.

2. If a Party, which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used for the illicit traffic, requests the assistance of other Parties in suppressing its use for that purpose, the Parties so requested shall render such assistance, within the means available to them.

3. Without prejudice to any rights provided for under general international law, a Party, which has reasonable grounds for believing that a vessel that is beyond the external limits of the territorial sea of any State and is flying the flag of another Party is engaged in illicit traffic, may, if that Party has received prior permission from the flag State, board, search and, if evidence of illicit traffic is discovered, seize such a vessel.

4. For the purposes of paragraph 3 of this article, a Party shall respond in an expeditious manner to requests from another Party to determine whether a vessel is registered under its laws

and to requests for permission made pursuant to the provisions in that paragraph. At the time of adhering to the Convention, each Party shall designate an authority to receive and respond to such requests. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties within one month of the designation.

5. Where evidence of illicit traffic is found, the Party having custody of the vessel shall take appropriate action with respect to the vessel and persons on board, in accordance with treaties, where applicable, or any prior agreement or arrangement otherwise reached with the flag State.

6. A Party which has taken any action contemplated in this article shall promptly inform the flag State concerned of the results of that action.

7. The Parties shall consider entering into bilateral and regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

Article 13*

FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress the illicit traffic in controlled substances in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

(a) To monitor the movement and transshipment of goods in free trade zones and free ports, and, to that end, shall empower appropriate authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles;

(b) To establish a detection system to discover and identify suspicious substances passing in or out of those areas, including, when appropriate, the search of crew members and passengers and their baggage;

(c) To maintain patrols in harbour and dock areas and at airports and border control points in those areas.

Article 14

SUPPRESSION OF THE USE OF THE MAILS FOR ILLICIT TRAFFIC

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and consistent with the basic principles of their respective national legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

2. Measures referred to in paragraph 1 of this article shall include, in particular:

(a) Coordinated preventive and repressive action to discourage the use of the mails for illicit traffic;

(b) Introduction and maintenance by authorized law enforcement personnel of investigative techniques designed to detect controlled substances in the mails;

(c) Legislative measures designed to enable the use of appropriate means to secure evidence required for judicial proceedings.

*Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 56-57).

**Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 58-67).

*Forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, para. 34).

Article 15*

FUNCTIONS OF THE COMMISSION

The Commission may consider all matters pertaining to the aims of this Convention, and in particular:

- (a) Make recommendations for the implementation of the aims and provisions of this Convention;
- (b) Draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith;
- (c) Establish and modify Lists A and B in accordance with article 8; and
- (d) Call the attention of the Board to any matters which may be relevant to the functions of the Board.

Article 16**

REPORTS TO BE FURNISHED BY THE PARTIES

1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions.
2. The Parties shall furnish the information referred to in paragraph 1 in such a manner and by such dates as the Commission may request.

Article 17***

COORDINATION AGENCY

Having due regard to their constitutional, legal and administrative systems, the Parties shall make arrangements at the national level for the coordination of preventive, investigative and repressive action against the illicit traffic, in particular for ensuring effective cooperation under article 6.

Article 18****

MEASURES BY THE [BOARD] [COMMISSION] TO ENSURE THE EXECUTION OF THE PROVISIONS OF THE CONVENTION

1. (a) If, on the basis of its examination of information submitted by Governments to the Secretary-General or to the Board or of information communicated by United Nations organs, the [Board] [Commission] has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a State to carry out the provisions of this Convention, the [Board] [Commission] shall have the right to ask for explanations from the Government of the State in question.

*Formerly article II of the draft implementation measures forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 109-110).

**Formerly article III of the draft implementation measures forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 111-115).

***Formerly article IV of the draft implementation measures forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 116-119).

****Formerly article V of the draft implementation measures forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 120-121).

(b) After taking action under subparagraph (a), the [Board] [Commission], if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

(c) If the [Board] [Commission] finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a), or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b), it may call the attention of the Parties, [and] the Council [and the Commission] to the matter.

2. The [Board] [Commission] shall publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. It shall also publish therein the views of the Government concerned if the latter so requests.

3. If in any case a decision of the [Board] [Commission] which is published under this article is not unanimous, the views of the minority shall be stated.

4. Any State shall be invited to be represented at a meeting of the [Board] [Commission] at which a question directly interesting it is considered under this article.

5. Decisions of the [Board] [Commission] under this article shall be taken by a two-thirds majority of the whole number of the [Board] [Commission].

Article 19*

APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of the illicit traffic.

Article 20**

SIGNATURE, RATIFICATION AND ACCESSION

Variant A:

1. Members of the United Nations, States not Members of the United Nations which are members of a specialized agency of the United Nations or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and any other State invited by the Council, and regional economic integration organizations which have competence in respect of the negotiation conclusion and application of international agreements in matters covered by the present Convention, may become Parties to this Convention:

*Formerly article VI of the draft implementation measures forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 122-123).

**Formerly article I of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, (para. 124). The Commission had a general discussion on the draft final clauses (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124-136). Because of their technical and procedural nature, the Commission decided to leave their review to either the Review Group or the Conference itself. The Review Group agreed to amend article 20 in the light of a proposal by the Commission of the European Communities.

- (a) By signing it; or
- (b) By ratifying it after signing it subject to ratification; or
- (c) By acceding to it.

References under the present Convention to Parties, States or national services shall be applicable to regional economic organizations within the limits of their competences.

2. The Convention shall be open for signature until . . . inclusive. Thereafter it shall be open for accession.

3. Instruments of ratification or accession shall be deposited with the Secretary-General.

Variant B:

1. The present Convention is open for signature by all States and regional economic integration organizations which have competence in respect of the negotiation conclusion and application of international agreements in matters covered by the present Convention. References under the present Convention to Parties, States or national services, shall be applicable to these organizations within the limits of their competences.

2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General.

3. The present Convention is open to accession by all States and regional economic integration organizations in the sense of paragraph 1 above. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

*Article 21**

ENTRY INTO FORCE

Variant A:

1. The Convention shall come into force on the thirtieth/sixtieth/ninetieth day after twenty/thirty/fifty of the States referred to in paragraph 1 of article I have signed it without reservation of ratification or have deposited their instruments of ratification or accession.

2. For any other State signing without reservation of ratification, or depositing an instrument of ratification or accession after the last signature or deposit referred to in the preceding paragraph, the Convention shall enter into force on the thirtieth/sixtieth/ninetieth day following the date of its signature or deposit of its instrument of ratification or accession.

Variant B:

1. This Convention shall enter into force on the thirtieth/sixtieth/ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth/thirtieth/fortieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth/thirtieth/fortieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth/sixtieth/ninetieth day after the date of the deposit of its own instrument of ratification or accession.

*Formerly article II of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124 and 127).

*Article 22**

TERRITORIAL APPLICATION

Variant A:

The Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

Variant B:

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General and shall take effect as from the thirtieth/sixtieth/ninetieth day after the day of receipt by the Secretary-General of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

*Article 23***

DENUNCIATION

Variant A:

1. After the expiry of two years from the date of the coming into force of this Convention any Party may, on its own behalf or on behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article III, denounce this Convention by an instrument in writing deposited with the Secretary-General.

2. The denunciation, if received by the Secretary-General on or before the first day of July of any year, shall take effect on the first day of January of the succeeding year, and if received after the first day of July it shall take effect as if it had been received on or before the first day of July in the succeeding year.

*Formerly article III of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124 and 128-129).

**Formerly article IV of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124 and 130).

3. The Convention shall be terminated if, as a result of denunciations made in accordance with paragraphs 1 and 2, the conditions for its coming into force as laid down in paragraph 1 of article II cease to exist.

Variant B:

1. A State Party may denounce this Convention at any time by written notification addressed to the Secretary-General.

2. Such denunciation shall take effect for the State Party concerned one year after the date of receipt of the notification by the Secretary-General.

3. A State which has made a notification under article III may, at any time thereafter, by a notification to the Secretary-General, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

*Article 24**

AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated to the Secretary-General, who shall communicate them to the Parties and to the Council. The Council may decide either:

(a) That a conference shall be called in accordance with paragraph 4 of Article 62 of the Charter of the United Nations to consider the proposed amendment; or

(b) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1(b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

*Article 25***

RESERVATIONS

1. A State may at the time of signature, ratification or accession make reservations in respect of the following provisions of the present Convention:

(a) Article . . .

(b) Article . . .

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted. A reservation shall be considered incompatible if at least two thirds of the Parties to this Convention object to it.

*Formerly article V of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124 and 131).

**Formerly article VI of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124 and 132-133).

3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 1 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have signed without reservation of ratification, ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

4. A State which has made reservations may at any time by notification in writing to the Secretary-General withdraw all or part of its reservations.

Variants of paragraphs 1 and 4:

1. At the time of signature, ratification or accession any State may make reservations to any article of the Convention other than articles . . .

[. . .]

4. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw all or part of its reservation by a notification to that effect addressed to the Secretary-General.

*Article 26**

DISPUTES

Variant A:

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred, at the request of any one of the Parties to the dispute, to the International Court of Justice for decision.

Variant B:

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other State Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

*Formerly article VII of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124 and 134).

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 27*

NOTIFICATIONS

The Secretary-General shall notify to all the States referred to in paragraph 1 of article I:

- (a) Signatures, ratifications and accessions in accordance with article I;
- (b) The date upon which this Convention enters into force in accordance with article II;
- (c) Denunciations in accordance with article IV; and
- (d) Declarations and notifications under articles III, IV and VII.

Article 28**

AUTHENTIC TEXTS

[. . .]

ANNEX IV

**Further proposals put forward at the
Review Group meeting relating to the text of the
draft Convention for consideration by the Conference*****

DRAFT PREAMBLE

Proposal by Mexico

[. . .]

[Third paragraph]

Recognizing that drug trafficking is a criminal activity with international effects that demands urgent attention and maximum priority,

[Fourth paragraph]

Aware that drug trafficking generates large financial profits and wealth through which criminal organizations may attempt to penetrate, contaminate and corrupt the structures of Government, legitimate commercial and financial business, and society at all its levels,

[Fifth paragraph]

Resolved to deprive drug traffickers both of the incentives of the demand for drugs and of the proceeds of their criminal

activity, and thereby to eliminate their main incentives for engaging in drug trafficking,

[. . .]

[Eighth paragraph]

Desiring to improve international cooperation in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea, within the framework of the international law of the sea,

[Ninth paragraph]

Recognizing that the eradication of drug trafficking is the responsibility of all States,

[Tenth paragraph]

Aware of the necessity of dealing with illicit drug trafficking by effective coordinated action within the framework of international cooperation,

[. . .]

[Twelfth paragraph]

Reaffirming the guiding principles of illicit drug trafficking control treaties and the system of drug control which they embody,

[. . .]

[Delete the final paragraph.]

Article 1

USE OF TERMS

Proposal by Argentina, Australia, Canada, Nigeria, Philippines, Senegal, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela

[. . .]

(b) "Commercial carrier" means any person or public or private entity engaged in transporting persons or goods for remuneration, hire or any other benefit.

[. . .]

Note: In French, the words "remuneration, hire or any other benefit" would be translated "à titre onéreux".

DEFINITIONS

Proposal by Mexico

"Freezing" or preventive embargo means the precautionary measures adopted by the competent authority consisting in temporarily prohibiting the transfer, conversion, disposition or movement of property;

"Forfeiture" means the definitive deprivation of proceeds by court order;

"Seizure" or securing means assuming custody or control of property by a competent authority;

*Formerly article VIII of the draft final clauses forwarded to the Conference by the Commission at its tenth special session (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, paras. 124 and 135).

**The suggestion was made at the tenth special session of the Commission that "an article should be added concerning the authentic text of the convention and the transmission of certified copies to States Parties" (see *Official Records of the Economic and Social Council, 1988, Supplement No. 3 (E/1988/13)*, para. 136).

***Forwarded to the Conference by the Review Group (see paragraph 14 of the present document).

"Illicit traffic" means, *inter alia*:

- (i) The sowing, cultivation, harvesting, production, fabrication, manufacture, extraction, preparation, conditioning, offering, offering for sale, distribution, supply, storage, purchase, acquisition, sale, prescription, delivery on any terms whatsoever, brokerage, dispatch, dispatch through the mails, dispatch in transit, transport, importation and exportation, possession, consumption, improper use, and the traffic in any other form, of any narcotic drug or psychotropic substance, contrary to the provisions of the respective applicable national laws and regulations and of the Single Convention on Narcotic Drugs, 1961, of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and of the Convention on Psychotropic Substances, 1971, or of substances in List A or List B contrary to article 8 of the present convention;
- (ii) The manufacture or distribution of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, or of substances in List A or List B, knowing that they are to be used for that purpose;
- (iii) The possession of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, or of substances in List A or List B, knowing that they are being or to be used for that purpose;
- (iv) The concealment, disguise or conversion of the nature, source, disposition, movement or ownership of property, knowing that such property is derived from any of the aforementioned offences;
- (v) The acquisition, possession or use of property knowing that such property is derived from any of the aforementioned offences;
- (vi) The undertaking through any means of communication, of acts of publicity, propaganda, general provocation, proselytism, instigation or illicit help to other persons to induce them, in any manner, to participate in any of the aforementioned offences;
- (vii) The participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting and counselling the commission of any of the aforementioned offences;
- (viii) The organization, management, financing or facilitating of any of the aforementioned offences.

Proposal by Canada and United States of America

"Confiscation" means the deprivation of property by order of a court or other lawful authority;

"Freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property;

"Laundering" means the transfer, concealment or disguise of the nature, source, location, disposition, movement, interest in or ownership of property;

"Seizure" means assuming custody or control of property by a lawful authority;

"Tracing" means determining the nature, source, location, disposition, movement, interest in or ownership of property.

"Illicit traffic" means:

- (i) The cultivation, production, manufacture, extraction, preparation, offering, offering for sale,

distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch through the mails, dispatch in transit, transport, importation and exportation of any narcotic drug or psychotropic substance contrary to the Single Convention on Narcotic Drugs, 1961, of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and of the Convention on Psychotropic Substances, 1971;

- (ii) The possession of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i);
- (iii) The organization, management, financing or facilitating of any of the activities enumerated in (i).

Consequential change to article 2, (1)(a)(ii)

- (ii) Manufacture or distribution of equipment or materials, including the substances listed in List A and List B, for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, knowing that they are to be used for that purpose.

"Property" means assets of every description and any other thing, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds or instruments evidencing title to, or interest in, such assets, or other things;

"Proceeds" means any property derived from or obtained, directly or indirectly through the commission of an offence established in accordance with this Convention;

"Instrumentalities" means any property used in or intended for use in the commission of an offence established in accordance with this Convention.

Article 2

OFFENCES AND SANCTIONS ..

Proposal by Mexico

1. Each Party undertakes to propose the necessary measures to its competent legislative bodies for them to establish as offences under its criminal law, if they have not done so:

[. . .]

- (a) (iv) Undertaking through any means of communication, acts of publicity, propaganda, general provocation, proselytism, instigation or illicit help to other persons to induce them, in any manner, to participate in any aspect of illicit traffic.

2. (a) Each Party undertakes to propose the necessary measures to its competent legislative bodies for them to establish that the commission of the offences set forth in paragraph 1 of this article is liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and forfeiture.

(b) The Parties may provide, in addition to the sanction, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

[. . .]

3. Each Party undertakes to propose the necessary measures to its competent legislative bodies for them to include in their national laws and regulations provisions which permit their courts to take into account factual circumstances which may make the commission of the offences set forth in paragraph 1, as well as the corresponding sanctions, particularly serious, such as:

[. . .]

(f) *bis*. The fact that the offence is committed in schools or social service or penitentiary centres or in their vicinity.

3 *bis*. Each Party undertakes to propose the necessary measures to its competent legislative bodies for them to modify its national laws and regulations, whenever such laws and regulations allow for procedural or extra-procedural arrangements between its competent administrative authorities and persons involved in the offences referred to in paragraph 1 of this article, with the purpose of eliminating from those laws and regulations any possibility of such arrangements, whenever they have the effect of substracting those persons from the most strict administration of justice, whether through the dismissal of the criminal action against them, the diminishing of charges, their modification, the transaction regarding the reduction or modification of the sanction, the concession of any type of immunity or any other form of procedural or extra-procedural bargaining and for any reason.

[. . .]

4. [Delete text in DND/DCIT/9.]

5. Each Party undertakes to propose the necessary measures to its competent legislative bodies for them to establish the most strict provisions possible governing the statute of limitations applicable to the offences enumerated in paragraph 1 of this article and, in any case, so that such provisions become even more strict whenever the offender attempts to impede or to avoid the administration of justice by leaving the State where the offence has been committed.

[. . .]

7. Nothing contained in this article shall affect the principle that the typification of the offences to which it refers is reserved to the domestic law of a Party and that such offences shall be investigated, prosecuted, tried and punished in conformity with that law.

Article 3

SECURITY MEASURES AND CONFISCATION

Proposal by Mexico

[. . .]

1. [. . .]

(a) Proceeds derived from offences established in accordance with article 2, paragraph 1, or *related* property the value of which corresponds to that of such proceeds;

[. . .]

2. Each Party *undertakes to approach its competent legislative bodies to initiate* such measures as may be necessary to enable its competent national authorities, *if they have not already done so*, to identify, trace, freeze or place under preventive embargo or seize or secure proceeds, property,

instrumentalities or any other things referred to in paragraph 1, for the purpose of the eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party *undertakes to approach its competent legislative bodies in order to initiate the necessary measures to* empower its courts or other competent authorities, *if they have not already done so*, to order, *to the extent explicitly permitted by its national legislation and in strict conformity with the same*, that bank, financial or commercial records be made available or be seized or secured. A Party shall *only invoke* bank secrecy to decline to act under the provisions of this paragraph *when this is essential in order to adhere strictly to the said national legislation*.

- (a) (i) Seek an order of *seizure or securing* from its competent authorities and, if such an order is granted, give effect to it; or
- (ii) Submit to its competent authorities, with a view to giving effect to it, an order of *seizure or securing* issued by the requesting Party in accordance with paragraph 1, to the extent to which it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

(b) Following a request made by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, and in conformity with the relevant paragraphs of article 5, the requested Party shall take measures *designed to ensure that its competent authorities* identify, trace, freeze or place under preventive embargo or seize or secure proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of an eventual confiscation to be ordered, *subject to the provisions of subparagraph (c) of this paragraph* either in the requesting Party or, pursuant to a request under section (a) in the requested Party.

[. . .]

Article 6

OTHER FORMS OF COOPERATION AND TRAINING

Proposal by Cuba

1. [. . .]

(a) *bis*. Where they are neighbouring States, they shall promote, through mutual coordination, the exchange of information concerning measures that they take in the vicinity of the boundaries of their respective territories for the prevention and repression of illicit drug trafficking, for the purpose of ensuring that traffickers do not enter the national territory of one of the Parties or unload their illicit merchandise there as a means of evading the vigilance of one of the Parties or pursuit by it, and shall prevent any action in this regard from having consequences prejudicial to the other Party;

[. . .]

(c) [. . .] In all such cases the Parties involved shall *guarantee* that the sovereignty of the Party on whose territory the operation is to take place is fully respected;

[. . .]

4. The Parties *may establish* effective coordination between their competent national agencies and services and, in that context, *adopt bilateral or other agreements or arrangements for countering the illicit traffic in narcotic drugs and psychotropic substances*.

[. . .]

Proposal by Mexico

Delete the text of paragraphs 1 and 4 in DND/DCIT/9 and renumber the remaining paragraphs accordingly.

Article 8

MEASURES TO MONITOR SUBSTANCES FREQUENTLY USED
IN THE ILLICIT PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS
OR PSYCHOTROPIC SUBSTANCES

Proposal by Mexico

[...]

9. Each Party *undertakes to propose the necessary measures to its competent legislative bodies with a view to their adoption of provisions enabling them to take the following measures with respect to substances in List A and List B:*

[...]

(b) Provide for the seizure *or securing* of any substance in List A or in List B if there is sufficient evidence that it is for use in the illicit processing or manufacture of a narcotic drug or psychotropic substance;

[...]

10. (a) In addition to the provisions of paragraph 9, each Party from whose territory a substance in List A is to be *legally* exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

[...]

Article 10

MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILLICITLY
AND TO ELIMINATE ILLICIT DEMAND FOR DRUGS

Proposal by Mexico

[...]

2. *In strict conformity with the provisions of Article 1 bis:*

(a) The Parties may cooperate to increase the effectiveness of eradication efforts. Such cooperation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. Parties may agree on any other appropriate measures of cooperation;

(b) *The Parties* shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication;

(c) *Whenever they have common frontiers, the Parties* shall seek to cooperate in eradication programmes in *their respective* areas along those frontiers.

3. *Each of the Parties undertakes to propose the necessary measures to its competent legislative bodies so as to bring about their adoption of the strictest measures aimed at eliminating*

illicit demand for drugs, with a view to eliminating *that incentive, as well as the financial incentives for illicit traffic which such demand produces.*

Article 12

ILLICIT TRAFFIC BY SEA

Proposal by Mexico

1. The Parties shall cooperate to the fullest extent possible to suppress the illicit traffic by sea, *in conformity with the international law of the sea.*

2. If a Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used *on the high seas* for the illicit traffic requests the assistance of other Parties in suppressing its use for that purpose, the Parties so requested shall render such assistance, within the means available to them.

[Delete paragraphs 3 to 7.]

Proposal by Peru

[...]

3. Without prejudice to the rules and principles of international law, a Party which has reasonable grounds for believing that a vessel that is on the high seas is engaged in illicit traffic may, if that Party has received prior permission from the flag State, board, search and, if evidence of illicit traffic is discovered, seize such a vessel.

[...]

Article 14

SUPPRESSION OF THE USE OF THE MAELS FOR ILLICIT TRAFFIC

Proposal by Mexico

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and *in strict conformity* with the basic principles of their respective national legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

2. Measures referred to in paragraph 1 of this article shall include, in particular:

[...]

(c) *Whatever measures need to be proposed to their competent legislative bodies, designed to enable the use of appropriate means to secure evidence required for judicial proceedings.*

DRAFT IMPLEMENTATION ARTICLES

Proposal by Mexico

Delete articles IV and V.

DOCUMENT E/CONF.82/11*

Report of the Committee of the Whole I

[Original: English]
[16 December 1988]

DOCUMENT E/CONF.82/C.1/L.18

[Original: English]
[16 December 1988]

1. The Committee of the Whole I (Committee I) held 33 meetings from 28 November through 15 December 1988. At its 3rd meeting, on 29 November 1988, the Committee set up a working group to consider article 2, paragraph 1, and the definition "illicit traffic". The Working Group held 12 meetings between 29 November and 8 December and reported to the Committee on 10 December 1988.

2. At its 1st plenary meeting, on 25 November 1988, the Conference elected G. Polimeni (Italy) as Chairman of Committee I. At its 2nd meeting, on 28 November 1988, Committee I elected A. Hena (Bangladesh) as Vice-Chairman and O. Hugler (German Democratic Republic) as Rapporteur. The Vice-Chairman later acted as moderator of the Working Group referred to in paragraph 1.

3. Committee I had originally been entrusted by the Conference with the consideration of articles 1, 1 *bis*, 2, 2 *bis*, 3, 4, 5, 5 *bis* and 6. It was later decided to entrust consideration of article 6 to the Committee of the Whole II (Committee II). The Preamble, which had originally been transmitted to Committee II for consideration, was later considered by Committee I.

4. The Rapporteur forwarded the draft report to the Drafting Committee in E/CONF.82/C.1/L.18/Add.1-8. The Drafting Committee was instructed by the General Committee to report directly to the Conference.

DOCUMENT E/CONF.82/C.1/L.18/ADD.8

[Original: English]
[16 December 1988]

Preamble

I. BASIC PROPOSAL

1. The text of the preamble which was before the Conference in document E/CONF.82/3 read as follows:

"DRAFT PREAMBLE

"The Parties,

"Deeply concerned by the magnitude of and upward trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances which pose a serious threat to the health and welfare of human

beings, and adversely affect the economic, cultural and political foundations of society,

"Observing the links between drug trafficking and other associated organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

"Recognizing that drug trafficking is an international criminal activity demanding urgent attention and maximum priority,

"Aware that drug trafficking generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of Government, legitimate commercial and financial business, and society at all its levels,

"Desiring to deprive drug traffickers of the proceeds of their criminal activity and thereby eliminate their main incentive for engaging in drug trafficking,

"Considering that measures of supervision are necessary for substances, including precursors, chemicals and solvents, the ready availability of which has led to an increase in the clandestine production of narcotic drugs and psychotropic substances falling under the provisions of the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances,

"Noting that the increased smuggling of drugs through regular post office channels calls for strengthening the existing international conventions which prohibit the illicit carriage of drugs in the mail,

"Desiring to improve international cooperation in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea,

"Recognizing that eradication of drug trafficking is the collective responsibility of all States,

"Aware of the necessity of dealing with drug trafficking by effective coordinated action within the framework of international cooperation,

"Acknowledging the competence of the United Nations in the field of drug control and desirous that the international organs concerned with drug control should be within the framework of that Organization,

"Reaffirming the guiding principles of existing drug control treaties and the system of drug control which they embody,

"Recognizing the need to reinforce and complement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the

*Incorporating documents E/CONF.82/C.1/L.18 and Add.1-8.

magnitude, extent and complexity of the illicit traffic in narcotic drugs and psychotropic substances and its grave consequences,

"Desiring to conclude an effective and operative international convention against the illicit traffic in narcotic drugs and psychotropic substances which considers the various aspects of the problem as a whole, in particular those not envisaged in the existing drug control treaties,

"Hereby agree as follows:"

II. AMENDMENTS

2. Amendments were submitted to the preamble by Mexico (E/CONF.82/3, annex IV, pp. 105-106), Cuba (E/CONF.82/C.2/L.20), Japan (E/CONF.82/C.2/L.34), India (E/CONF.82/C.2/L.35), China (E/CONF.82/C.2/L.36), Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, India, Jamaica, Mexico, Panama, Paraguay, Peru, Philippines and Venezuela (E/CONF.82/C.2/L.37).

3. These amendments were to the following effect:

First paragraph

India (E/CONF.82/C.2/L.35)

Replace the word "upward" in the first line by the word "rising".

Cuba (E/CONF.82/C.2/L.20)

Insert the words "abuse of" after the words "demand for".

Second paragraph

India (E/CONF.82/C.2/L.35)

Replace the word "observing" in the first line by the word "recognizing" and the word "associated" by the word "related" and insert the words "including economic and commercial frauds" after the word "activities" in the second line.

Third paragraph

India (E/CONF.82/C.2/L.35)

Replace the word "maximum" in the second line by the word "highest".

Mexico (E/CONF.82/3, annex IV, p. 105)

Insert the words "with international effects that demands" between the words "activity" and "demand".

Proposed new third paragraph bis

China (E/CONF.82/C.2/L.36)

Add the following as a new third paragraph bis:

"Recognizing also the importance of strengthening effective legal means for international cooperation, such as extradition, mutual legal assistance and controlled delivery etc., for suppressing the international criminal activity of illicit traffic,"

Fourth paragraph

India (E/CONF.82/C.2/L.35)

Replace the fourth paragraph with the following:

"Being conscious that illicit traffic generates large financial resources and wealth enabling transnational criminal organizations which often penetrate into and corrupt the structures of Government, legitimate commercial and financial activities and society at all its levels,"

Mexico (E/CONF.82/3, annex IV, p. 105)

Replace the words "enabling transnational" by the words "through which" and insert the words "may attempt" between the words "organizations" and "to penetrate".

Fifth paragraph

India (E/CONF.82/C.2/L.35)

Replace the word "desiring" by the word "determined" and the word "proceeds" by the words "ill gotten gains".

Cuba (E/CONF.82/C.2/L.20)

Amend the fifth paragraph to read as follows:

"Desiring to deprive those who are engaged in illicit drug traffic and other related activities of the objects, means and proceeds derived from such activities and thereby to eliminate the main incentive for them,"

Mexico (E/CONF.82/3, annex IV, p. 105)

Insert the words "both of the incentives of the demand for drugs and" between the words "traffickers" and "of the proceeds".

Sixth paragraph

India (E/CONF.82/C.2/L.35)

Replace the first clause with the following:

"Considering that control measures are necessary for material, equipment and substances, including precursors, chemicals and solvents"

Replace the word "falling" in the fourth line by the word "covered".

Japan (E/CONF.82/C.2/L.34)

Insert the words "which are essential to the manufacture of narcotic drugs and psychotropic substances" after "chemicals and solvents".

*Proposed new sixth paragraph bis**Japan (E/CONF.82/C.2/L.34)*

Add the following as a new sixth paragraph *bis*:

"Recognizing the necessity to avoid any adverse effect on the legitimate activities of the chemical and pharmaceutical industries,"

*Seventh paragraph**India (E/CONF.82/C.2/L.35)*

Replace the words "regular post office channels" by the words "through the mails" and the words "drugs in the mail" by the words "narcotic drugs and psychotropic substances through the mails".

*Eighth paragraph**India (E/CONF.82/C.2/L.35)*

Replace the word "desiring" by the word "determined".

Cuba (E/CONF.82/C.2/L.20)

Delete the words "by sea".

Mexico (E/CONF.82/3, annex IV, p. 105)

Add the words "within the framework of the international law of the sea" at the end of the paragraph.

*Ninth paragraph**India (E/CONF.82/C.2/L.35)*

Replace the word "eradication" by the word "elimination".

Cuba (E/CONF.82/C.2/L.20)

Replace the words "drug trafficking" by the words "the abuse of and the illicit traffic in drugs"

Mexico (E/CONF.82/3, annex IV, p. 105)

Delete the word "collective".

*Tenth paragraph**Mexico (E/CONF.82/3, annex IV, p. 105)*

Insert the word "illicit" before the words "drug trafficking".

*Twelfth paragraph**Mexico (E/CONF.82/3, annex IV, p. 106)*

Insert the word "illicit" before the word "drug" and the word "trafficking" before the word "control".

*Thirteenth paragraph**India (E/CONF.82/C.2/L.35)*

Replace the word "complement" in the first line by the word "supplement".

*Fourteenth paragraph**India (E/CONF.82/C.2/L.35)*

Replace the words "or effective and operative" by the words "a comprehensive" and insert the word "specifically" after the word "convention".

*Last preambular paragraph**Mexico (E/CONF.82/3, annex IV, p. 106)*

Delete the last paragraph.

Additional preambular paragraph

Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, India, Jamaica, Mexico, Panama, Paraguay, Peru, Philippines and Venezuela (E/CONF.82/C.2/L.37)

Add the following new preambular paragraph:

"Deeply concerned by the steadily increasing inroads being made by illicit drug traffic among various social groups, and particularly by the use of children as a drug consumption market and as instruments in connection with the production of an illicit trade in drugs, for whom the danger is of incalculable gravity,"

III. PROCEEDINGS OF COMMITTEE I

A. Meetings

4. Committee I discussed the preamble, and the amendments thereto, at its 33rd meeting on 15 December 1988.

B. Consideration and decisions

5. The Committee was informed that the delegation of Cuba had withdrawn the amendments submitted by Cuba as contained in document E/CONF.82/C.2/L.20 in order to facilitate and expedite the completion of the work of the Committee.

6. The Drafting Committee was requested to ensure appropriate consistency between the text of the preamble where the expression "drug trafficking" is used and the substantive articles of the Convention, including the title, where the expression "illicit traffic in narcotic drugs and psychotropic substances" is more generally utilized.

First paragraph

7. The Committee agreed on the first paragraph as contained in the basic proposal with the replacement of the

word "upward" by the word "rising" as proposed by India (E/CONF.82/C.2/L.35).

Second paragraph

8. The Committee agreed on the second paragraph as contained in the basic proposal with the replacement of the words "observing" and "associated" by the words "recognizing" and "related" as proposed by India (E/CONF.82/C.2/L.35), with the understanding that the expression "organized criminal activities" includes all forms of criminal activities including international criminal activities.

Third paragraph

9.* The Committee agreed on the third paragraph as contained in the basic proposal with the replacement of the word "maximum" by the word "highest" as proposed by India (E/CONF.82/C.2/L.35).

Proposed new third paragraph bis

10. The representative of China introduced his proposal for the inclusion of a new third paragraph *bis* (E/CONF.82/C.2/L.36) and amended it by inserting the word "confiscation" after the words "such as".

11. Following general discussion and taking into consideration an amendment proposed by the Netherlands, the Committee agreed on the following formulation:

"Recognizing also the importance of strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international criminal activity of illicit traffic".

12. The Committee agreed to place the paragraph as the penultimate paragraph of the preamble.

Fourth paragraph

13. The Committee agreed on the fourth paragraph as contained in the basic proposal. An alternative formulation proposed by India (E/CONF.82/C.2/L.35) was not accepted.

Fifth paragraph

14. The Committee agreed on the fifth paragraph as contained in the basic proposal with the replacement of the word "desiring" by the word "determined" as proposed by India (E/CONF.82/C.2/L.35).

Proposed new fifth paragraph bis

15. The representative of Mexico orally proposed the inclusion of the following fifth paragraph *bis* co-sponsored by Canada:

"Desiring to eliminate the root causes of the drug abuse problem, including the demand for drugs and the enormous profit derived from drug trafficking".

*In the draft report the paragraph numbering was incorrect for paragraphs 9-32, and thus differs from the final report.

16. Following general discussion and oral amendments, the Committee agreed on the text proposed by the sponsors with the words "the demand for drugs" being replaced by the words "the illicit demand for narcotic drugs and psychotropic substances".

17. The Committee was informed that in view of the inclusion of this new paragraph in the preamble, the delegation of Mexico would not press for the amendments initially proposed by Mexico as contained in document E/CONF.82/3, annex IV, pages 105-106.

Sixth paragraph

18. The Committee had before it the text of the sixth paragraph as contained in the basic proposal and an amendment proposed by Japan (E/CONF.82/C.2/L.34).

19. Following general discussion and oral amendments, and taking into account the proposal submitted by Japan, the Chairman proposed a reformulated text reading as follows:

"Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine production of narcotic drugs and psychotropic substances,"

20. The Committee agreed to the reformulation proposed by the Chairman. The phrase referring to existing conventions, which appeared in the basic proposal, was deleted on the understanding that the matter would be covered in the definitions of narcotic and psychotropic substances to be included in article 1 on definitions.

21. A proposed reformulation of the first clause by India (E/CONF.82/C.2/L.35) was not accepted by the Committee.

Seventh paragraph

22. The Committee decided to delete the seventh paragraph as contained in the basic proposal.

Eighth paragraph

23. The Committee agreed on the text of the eighth paragraph as contained in the basic proposal with the replacement of the word "desiring" by the word "determined" as proposed by India (E/CONF.82/C.2/L.35).

Ninth and tenth paragraphs

24. The Committee, following a proposal by the representative of Bolivia, decided to merge the ninth and tenth paragraphs to read as follows:

"Recognizing that eradication of drug trafficking is a collective responsibility of all States and that, to that end, coordinated action within the framework of international cooperation is necessary,"

Eleventh and twelfth paragraphs

25. The Committee agreed on the text of the eleventh and twelfth paragraphs as contained in the basic proposal.

Thirteenth paragraph

26. The Committee agreed on the text of the thirteenth paragraph as contained in the basic proposal with the replacement of the word "complement" by the word "supplement" as proposed by India (E/CONF.82/C.2/L.35).

Fourteenth paragraph

27. The Committee agreed on the text of the fourteenth paragraph as contained in the basic proposal with the insertion of the word "comprehensive" before the word "effective" and, as proposed by India, the insertion of the word "specifically" after the word "convention".

Additional paragraph

28. The Committee heard a statement from the representative of Peru concerning the substance of a new preambular paragraph co-sponsored by 18 delegations (E/CONF.82/C.2/L.37).

29. Following general discussion, the Committee adopted the proposed new preambular paragraph with the insertion of the words "in many parts of the world" between the words "particularly" and "by the use of" as orally proposed by the representative of the Netherlands.

30. The Committee agreed to place the additional paragraph as the second preambular paragraph.

31. The Drafting Committee was requested to improve the drafting of this new paragraph, particularly in the English version.

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

32. The Committee agreed on the following text of the preamble which is being transmitted to the Drafting Committee for its consideration:

*"DRAFT PREAMBLE**"The Parties,*

"Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances which pose a serious threat to the health and welfare of human beings, and adversely affect the economic, cultural and political foundations of society,

"Deeply concerned by the steadily increasing inroads being made by illicit drug traffic among various social groups, and particularly, in many parts of the world, by the use of children as a drug consumption market and as instruments in connection with the production of and illicit trade in drugs, for whom the danger is of incalculable gravity,

"Recognizing the links between drug trafficking and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

"Recognizing that drug trafficking is an international criminal activity demanding urgent attention and highest priority,

"Aware that drug trafficking generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of Government, legitimate commercial and financial business, and society at all its levels,

"Determined to deprive drug traffickers of the proceeds of their criminal activity and thereby eliminate their main incentive for engaging in drug trafficking,

"Desiring to eliminate the root causes of the drug abuse problem, including the demand for drugs and the enormous profit derived from drug trafficking,

"Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine production of narcotic drugs and psychotropic substances,

"Determined to improve international cooperation in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea,

"Recognizing that eradication of drug trafficking is a collective responsibility of all States and that, to that end, coordinated action within the framework of international cooperation is necessary,

"Acknowledging the competence of the United Nations in the field of drug control and desirous that the international organs concerned with drug control should be within the framework of that Organization,

"Reaffirming the guiding principles of existing drug control treaties and the system of drug control which they embody,

"Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude, extent and complexity of the illicit traffic in narcotic drugs and psychotropic substances and its grave consequences,

"Recognizing also the importance of strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international criminal activity of illicit traffic,

"Desiring to conclude a comprehensive, effective and operative international convention specifically against the illicit traffic in narcotic drugs and psychotropic substances which considers the various aspects of the problem as a whole, in particular those not envisaged in the existing drug control treaties,

"Hereby agree as follows:"

DOCUMENT E/CONF.82/C.1/L.18/ADD.6*

[Original: English]
[14 December 1988]

Article 1 bis

I. BASIC PROPOSAL

1. The text of article 1 *bis* which was before the Conference in document E/CONF.82/3 read as follows:

"[Article 1 bis

"SCOPE OF THE CONVENTION

"In full compliance with the principles of international law regarding legal equality and sovereign equality of States, as well as the principle of non-intervention in domestic affairs which are essentially within the exclusive competence of States, the Parties agree that:

"1. This Convention constitutes an instrument of international cooperation, aimed at ensuring maximum effectiveness in the struggle of the States Parties against the illicit traffic in narcotic drugs and psychotropic substances, in all aspects of the problem as a whole, in all cases within the most strict respect for, and in full compliance with, the limits set by the provisions of the respective internal legal system of each State Party, and in the framework of applicable treaties in force on the matter.

"2. Nothing in this Convention empowers, in any way whatsoever, the authorities of one of the States Parties to undertake, to attempt to undertake or to exercise pressure in order to be allowed, in the territorial jurisdiction of any of the other States Parties, the exercise and performance of functions whose jurisdiction or competence are exclusively reserved to the authorities of each of those other States Parties by their respective national laws and regulations.

"3. This Convention in no case implies and cannot be interpreted in the sense that, in order to comply with it, a State Party has undertaken, by virtue of its provisions, to take measures itself or to authorize measures in its territorial jurisdiction which in any way exceed its legal jurisdiction or competence, or which in any other manner are not expressly permitted by its legal provisions in force, or which may, in the judgement of that State Party, prejudice its security, public order or any other essential interest.

"4. In conformity with the above paragraphs, none of the provisions of this Convention shall be invoked or utilized as a pretext to attempt to go beyond the precise limits of its scope, in contravention of the provisions of this article.]"

II. AMENDMENTS

2. Amendments were submitted to article 1 *bis* by Canada and Mexico (E/CONF.82/C.1/L.1), Canada and

Mexico (E/CONF.82/C.1/L.1/Rev.1), Afghanistan, Algeria, Argentina, Bahamas, Bangladesh, Bolivia, Botswana, Brazil, Cameroon, Canada, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Ecuador, Egypt, Ethiopia, Ghana, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Kenya, Kuwait, Malaysia, Mauritania, Mauritius, Mexico, Nepal, Panama, Paraguay, Peru, Philippines, Republic of Korea, Senegal, Sri Lanka, United Republic of Tanzania, Uruguay, Venezuela and Yugoslavia (E/CONF.82/C.1/L.1/Rev.2 and Add.1), United Kingdom of Great Britain and Northern Ireland (E/CONF.82/C.1/L.31) and United States of America (E/CONF.82/C.1/L.38).

3. These amendments, relating to the entire article, were to the following effect:

Canada and Mexico (E/CONF.82/C.1/L.1)

Substitute article 1 *bis* of the basic proposal as proposed by Mexico (E/CONF.82/3) with the following:

"SCOPE OF THE CONVENTION

"1. This Convention constitutes an instrument of international cooperation, aimed at ensuring maximum effectiveness in the struggle of the States Parties against the illicit traffic in narcotic drugs and psychotropic substances. Its provisions, which are directed at all aspects of the problem, establish obligations which are to be implemented and executed with strict respect for the provisions of the internal system of each State Party.

"2. Nothing in this Convention derogates from the principles of the sovereign equality and territorial integrity of States or that of non-intervention in the domestic affairs of States.

"3. Nothing in this Convention empowers the authorities of one of the States Parties to undertake, in the territorial jurisdiction of any of the other States Parties, the exercise and performance of functions whose jurisdiction or competence are exclusively reserved for the authorities of those other States Parties by their national laws and regulations."

Canada and Mexico (E/CONF.82/C.1/L.1/Rev.1)

Amend article 1 *bis* to read:

"SCOPE OF THE CONVENTION

"1. This Convention constitutes an instrument of international cooperation, aimed at ensuring maximum effectiveness in the struggle of the States Parties against the illicit traffic in narcotic drugs and psychotropic substances. Its provisions, which are directed at all aspects of the problem, establish obligations which are to be implemented and executed with strict respect for the provisions of the internal system of each State Party.

"2. Nothing in this Convention derogates from the principles of the sovereign equality and territorial integrity of States or that of non-intervention in the domestic affairs of States.

*Incorporating document E/CONF.82/C.1/L.18/Add.6/Corr.1.

"3. Nothing in this Convention empowers the authorities of one of the States Parties to undertake, in the territorial jurisdiction of any of the other States Parties, the exercise and performance of functions whose jurisdiction or competence are exclusively reserved for the authorities of those other States Parties by their national laws and regulations."

Afghanistan, Algeria, Argentina, Bahamas, Bangladesh, Bolivia, Botswana, Brazil, Cameroon, Canada, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Ecuador, Egypt, Ethiopia, Ghana, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Kenya, Kuwait, Malaysia, Mauritania, Mauritius, Mexico, Nepal, Panama, Paraguay, Peru, Philippines, Republic of Korea, Senegal, Sri Lanka, United Republic of Tanzania, Uruguay, Venezuela and Yugoslavia (E/CONF.82/C.1/L.1/Rev.2 and Add.1)

Replace article 1 *bis* as revised (E/CONF.82/C.1/L.1/Rev.1) with the following:

"Article 1 *bis*

"SCOPE OF THE CONVENTION

"1. This Convention constitutes an instrument of international cooperation, aimed at ensuring maximum effectiveness in the struggle of the States Parties against the illicit traffic in narcotic drugs and psychotropic substances. Its provisions, which are directed at all aspects of the problem, establish obligations which are to be implemented and executed with strict respect for the fundamental provisions of the internal legal system of each State Party.

"2. Nothing in this Convention derogates from the principles of the sovereign equality and territorial integrity of States or that of non-intervention in the domestic affairs of States.

"3. Nothing in this Convention empowers the authorities of one of the States Parties to undertake, in the territorial jurisdiction of any of the other States Parties, the exercise and performance of functions whose jurisdiction or competence are exclusively reserved for the authorities of those other States Parties by their national laws and regulations."

United Kingdom of Great Britain and Northern Ireland (E/CONF.82/C.1/L.31)

Replace the second sentence of paragraph 1 as it appears in E/CONF.82/C.1/L.1/Rev.2 with the following:

"SCOPE OF THE CONVENTION

"In implementing and executing their obligations under the Convention, States Parties shall take any necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their internal legal systems."

United States of America (E/CONF.82/C.1/L.38)

Redraft article 1 *bis* as follows:

"SCOPE OF THE CONVENTION

"1. The purpose of the present Convention is to promote cooperation among States Parties so that they may address more effectively the various aspects of the drug abuse problem having an international dimension. In implementing and executing their obligations under the Convention, States Parties shall take any necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their internal legislative systems.

"2. States Parties shall carry out their obligations under the present Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

"3. A State Party to the present Convention shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law and regulations."

III. PROCEEDINGS OF COMMITTEE I

A. *Meetings*

4. Committee I initially discussed article 1 *bis*, and the amendments thereto, at its 24th, 27th, 28th and 29th meetings from 10 to 13 December 1988.

B. *Consideration and decisions*

5. The Committee had before it the text of paragraph 1 *bis* contained in the basic proposal (E/CONF.82/3).

6. A reformulation of this provision was proposed by Canada and Mexico (E/CONF.82/C.1/L.1).

7. Following consultations, the representatives of Canada and Mexico presented another reformulated text of paragraph 1 *bis* (E/CONF.82/C.1/L.1/Rev.1). After further consultations among delegations, a revised text of article 1 *bis* was submitted to the Committee by 42 delegations (E/CONF.82/C.1/L.1/Rev.2 and Add.1).

8. At its 24th meeting, the Committee examined the proposed revised text of article 1 *bis* and heard an interpretative statement by the representative of Canada, on behalf of the original co-sponsors of the revised text, regarding the rationale for the proposed article.

9. In the course of the discussion, the representative of the United Kingdom, on behalf of 13 other delegations, orally introduced an amendment to the second sentence of paragraph 1 as contained in E/CONF.82/C.1/L.1/Rev.2 aimed at making explicit that the Parties themselves would decide what laws they would require and what institutions they would establish to meet the obligations of the Convention. The amendment was subsequently circulated in E/CONF.82/C.1/L.31.

10. The representative of the United States of America, who had objected to the reformulated text as contained in E/CONF.82/C.1/L.1/Rev.1, orally proposed a redraft which, with minor changes, was subsequently circulated in document E/CONF.82/C.1/L.38.

11. The Committee agreed on the proposed redraft with the replacement of the words "the drug abuse problem" in paragraph 1 by the words "illicit traffic in narcotic drugs and psychotropic substances".

12. The Committee also decided that the agreed text of article 1 *bis* would appear after article 1 dealing with definitions.

IV. TEXT SUBMITTED TO THE DRAFTING COMMITTEE

13. The Committee agreed on the following text which is being submitted to the Drafting Committee:

"SCOPE OF THE CONVENTION

"1. The purpose of the present Convention is to promote cooperation among States Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In implementing and executing their obligations under the Convention, States Parties shall take any necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their internal legislative systems.

"2. States Parties shall carry out their obligations under the present Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

"3. A State Party to the present Convention shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law and regulations."

DOCUMENT E/CONF.82/C.1/L.18/ADD.1

[Original: English]
[12 December 1988]

Article 2

I. BASIC PROPOSAL

1. The text of article 2 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 2

"OFFENCES AND SANCTIONS

"1. Each Party shall adopt such measures as may be necessary to establish as offences under its criminal law, when committed intentionally:

- "(a) (i) Illicit traffic;
- "(ii) Manufacture or distribution of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, knowing that they are to be used for that purpose;
- "(iii) Concealment, disguise or conversion of the nature, source, disposition, movement or ownership of property, knowing that such property is derived from illicit traffic;
- "(b) Subject to its constitutional limitations, legal system and domestic law,
 - "(i) Acquisition, possession or use of property knowing that such property is derived from illicit traffic;
 - "(ii) Possession of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, knowing that they are being or to be used for that purpose;
 - "(iii) Participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting and counselling the commission of any offences under subparagraphs (a)(i), (ii) and (iii) and under (i) and (ii) of this paragraph.

"2. (a) Each Party shall make the commission of the offences set forth in paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and forfeiture.

"(b) Parties may provide, in addition to conviction or punishment, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

"(c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

"3. The Parties shall ensure that their courts can take into account factual circumstances which may make the commission of the offences set forth in paragraph 1 particularly serious, such as:

- "(a) The involvement in the offence of an organized criminal group to which the offender belongs;
- "(b) The involvement of the offender in other international organized criminal activities;
- "(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;
- "(d) The use of firearms or violence;
- "(e) The fact that the offender holds a public office and that the offence is connected with the office in question;
- "(f) The victimization or use of minors;

"(g) Prior conviction, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

"4. The Parties shall bear in mind the serious nature of the offences enumerated in paragraph 1 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

"5. The Parties shall endeavour to establish, where appropriate, adequate provisions governing the statute of limitations applicable to the offences enumerated in paragraph 1 of this article.

"6. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence specified in paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.

"7. [For the purpose of cooperation between Parties under this Convention, [including, in particular, cooperation under articles 3, 4, 5 and 6,] offences established in accordance with this article shall not be considered as political [or fiscal] offences or regarded as politically motivated.] [The application of this provision shall be without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.] [In any case, this provision shall not be applied in prejudice to the institution of the right of asylum in conformity with international law.]

"8. Nothing contained in this article shall affect the principle that the description of the offences to which it refers is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law."

II. AMENDMENTS

2. Amendments were submitted to article 2 by Mexico (E/CONF.82/3, annex IV, pp. 108-109), German Democratic Republic (E/CONF.82/C.1/L.3), Netherlands (E/CONF.82/C.1/L.4), Federal Republic of Germany (E/CONF.82/C.1/L.5), India (E/CONF.82/C.1/L.6), Canada and Mexico (E/CONF.82/C.1/L.7/Rev.1), Argentina, Brazil, Canada, Colombia, Cuba, Egypt, Ghana, Mexico, Peru and Venezuela (E/CONF.82/C.1/L.8), Jamaica (E/CONF.82/C.1/L.9), Argentina, Colombia and Mexico (E/CONF.82/C.1/L.10), Argentina, Australia, Botswana, Canada, Colombia, France, Germany, Federal Republic of, India, Mexico, Philippines, United Kingdom of Great Britain and Northern Ireland and United States of America (E/CONF.82/C.1/L.14), and Working Group on article 2 (E/CONF.82/C.1/L.25).

3. These amendments were to the following effect:

Paragraph 1

Mexico (E/CONF.82/3, annex IV, p. 108)

Amend introductory sentence of paragraph 1 and insert new subparagraph (a)(iv) as follows:

"1. Each Party undertakes to propose the necessary measures to its competent legislative bodies for them to establish as offences under its criminal law, if they have not done so:

[. . .]

"(a) (iv) Undertaking through any means of communication, acts of publicity, propaganda, general provocation, proselytism, instigation or illicit help to other persons to induce them, in any manner, to participate in any aspect of illicit traffic."

German Democratic Republic (E/CONF.82/C.1/L.3)

Amend paragraph 1 to read as follows:

"1. Each Party shall adopt such measures as may be necessary to establish as offences under its criminal law, when committed intentionally:

"(a) (i) Illicit traffic in narcotic drugs and psychotropic substances;

"(ii) Manufacture, distribution or possession of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances, knowing that they are being used or are to be used for that purpose;

"(iii) Acquisition, possession, use, concealment, disguise or conversion of the nature, source, disposition, movement or ownership of property, knowing that such property is derived from illicit traffic in narcotic drugs and psychotropic substances;

"(b) Participation in, association or conspiracy to commit, attempts to commit, aiding, abetting and counselling the commission of any offences under subparagraph (a)."

Netherlands (E/CONF.82/C.1/L.4)

Amend paragraph 1 to read as follows:

"1. Each Party shall adopt such measures as may be necessary to establish as offences under its criminal law, when committed intentionally:

"(a) (i) The production, processing, manufacture, offering, offering for sale or distribution, the distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any substance contrary to the Single Convention on Narcotic Drugs, 1961 (as amended by the 1972 Amending Protocol) or to the Convention on Psychotropic Substances, 1971;

"(ii) The possession or purchase of any narcotic drugs or psychotropic substances for the purpose of any of the activities enumerated in (i) above;

"(iii) The manufacture, transport or distribution of equipment or materials, including

substances listed in List A and List B, for the production, processing or manufacture of narcotic drugs or psychotropic substances contrary to (i) above;

- “(iv) The organization, management or financing of any of the activities enumerated in (i-iii) above;

“(b) The concealment or disguise of the nature, source, disposition, movement, location or ownership of, or rights with respect to, property, knowing that such property constitutes proceeds, derived from an offence set forth in this article;

“(c) Subject to its constitutional limitations, legal system and domestic law,

- “(i) The acquisition, possession or use of property, knowing, at the time of receiving, that such property constituted proceeds, derived from any of the offences set forth in this article, as well as converting or transferring property for purposes of gain, knowing that such property constitutes such proceeds;
- “(ii) The possession of equipment or materials, including the substances listed in List A and List B, for the production, processing or manufacture of narcotic drugs or psychotropic substances contrary to subparagraph (a)(i) above;
- “(iii) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences set forth in this article.”

Federal Republic of Germany (E/CONF.82/C.1/L.5)

Sub-amendment to the Netherlands amendment (E/CONF.82/C.1/L.4) indicated above:

1. In paragraph 1, subparagraph (b) as well as in subparagraph (c)(i), the words “set forth in this article” should be replaced by the words “set forth in (a)(i) or (iv) above or from an offence established in accordance with (c)(iii) below in connection with an offence set forth in (a)(i) or (iv) above”.

2. In paragraph 1, subparagraph (b), the words “, excepting such acts as are enumerated under (c)(i)” should be added.

India (E/CONF.82/C.1/L.6)

Amend paragraph 1 to read as follows:

“1. Each Party shall adopt such measures as may be necessary to establish the following as offences under its national law, when committed intentionally:

- “(i) Illicit traffic;
- “(ii) Manufacture, possession or distribution of materials or equipment for illicit production, processing or manufacture of narcotic drugs or psychotropic substances;

- “(iii) Acquisition, possession, use, concealment, disguising or conversion of the nature, source, disposition, movement or ownership of property or proceeds derived from or used in illicit traffic;
- “(iv) Participation in conspiracy to commit and attempt to commit any of such offences, and preparatory acts and financial operations in connection with the offences referred to in this article, and aiding in, abetting, planning and organizing the commission of any offences under subparagraphs (i), (ii) and (iii) of this paragraph.”

Proposed new paragraph 1 bis

Netherlands (E/CONF.82/C.1/L.4)

Insert the following as a new paragraph 1 bis:

“Knowledge required as an element of an offence set forth in paragraph 1 may be inferred from objective factual circumstances.”

Reformulated paragraph 1 and subparagraph 2(d)

Working Group, Committee I (E/CONF.82/C.1/L.25)

Replace the text of article 2, paragraph 1 with the following text, add new paragraphs 1 bis and 1 ter and introduce a new subparagraph 2(d):

“1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

- “(a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, or to the Convention on Psychotropic Substances;
- “(i) bis The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;
- “(ii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
- “(iii) The manufacture, transport or distribution of equipment or materials such as substances listed in List A and List B knowing that they are to be used in or for the

illicit cultivation, production, processing or manufacture of narcotic drugs or psychotropic substances;

“(iv) The organization, management or financing of any of the offences enumerated in (i), (i) *bis*, (ii) or (iii) above;

“(b) (i) The conversion or transfer of property knowing that such property is derived from any offence or offences set forth in subparagraph (a) above, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or for the purpose of assisting any person who is involved in the commission of such an offence or offences, set forth in subparagraph (a) above, to escape the legal consequences of his actions;

“(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences set forth in subparagraph (a) above or from an act of participation in such an offence or offences.

“(c) Subject to its constitutional principles and basic concepts of its legal system,

“(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences set forth in subparagraph (a) above or from an act of participation in such offence or offences;

“(ii) The possession of equipment or materials such as the substances listed in List A and List B, knowing that they are being or to be used in or for the illicit cultivation, production (processing) or manufacture of a narcotic drug or psychotropic substance;

“(ii) *bis* Publicly inciting or inducing others, by any means, to commit any of the offences established pursuant to this article or to use a narcotic drug or psychotropic substance illicitly;

“(iii) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offence or offences established pursuant to this article.

“ . . .

“1 *bis*. Knowledge, intent, or purpose required as an element of an offence set forth in paragraph 1 may be inferred from objective factual circumstances.

“1 *ter*. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when

committed intentionally, the possession, purchase or cultivation of a narcotic drug or a psychotropic substance for personal consumption contrary to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, or to the Convention on Psychotropic Substances.

“ . . .

“2. (d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 1 *ter*, measures for the treatment, education, aftercare, rehabilitation and social reintegration of the offender.

“ . . .”

Proposed new subparagraph 3(f) bis

Argentina, Brazil, Canada, Colombia, Cuba, Egypt, Ghana, Mexico, Peru and Venezuela
(E/CONF.82/C.1/L.8)

Insert the following as a new subparagraph 3(f) *bis*:

“The fact that the offence is committed in schools or social service or penitentiary centres or in their vicinity.”

Proposed new subparagraph 3(f) ter

Argentina, Colombia and Mexico (E/CONF.82/C.1/L.10)

Insert the following as a new subparagraph 3(f) *ter*:

“The fact that the offence has been committed in places or areas where groups of schoolchildren carry on out-of-school cultural or recreational activities.”

Proposed new paragraph 3 bis

Mexico (Report of the Review Group E/CONF.82/3, p. 109)

Insert the following as a new paragraph 3 *bis*:

“Each Party undertakes to propose the necessary measures to its competent legislative bodies for them to modify its national laws and regulations, whenever such laws and regulations allow for procedural or extra-procedural arrangements between its competent administrative authorities and persons involved in the offences referred to in paragraph 1 of this article, with the purpose of eliminating from those laws and regulations any possibility of such arrangements, whenever they have the effect of subtracting those persons from the most strict administration of justice, whether through the dismissal of the criminal action against them, the diminishing of charges, their modification, the transaction regarding the reduction or modification of the sanction, the concession of any type of immunity or any other form of procedural or extra-procedural bargaining and for any reason.”

Argentina, Australia, Botswana, Canada, Colombia, France, Germany, Federal Republic of, India, Mexico, Philippines, United Kingdom of Great Britain and Northern Ireland and United States of America
(E/CONF.82/C.1/L.14)

Redraft of proposed new paragraph 3 *bis* submitted by Mexico:

"The Parties shall endeavour to ensure that any discretionary legal powers relating to the prosecution of persons for offences set forth in this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter those involved."

Paragraph 5

Canada and Mexico (E/CONF.82/C.1/L.7/Rev.1)

Replace paragraph 5 with the following text:

"Each Party shall establish strict provisions governing the statute of limitations applicable to offences set forth in paragraph 1. Such provisions shall be made stricter if the offender flees the territory of a Party, thus inhibiting prosecution."

Proposed addition to paragraph 7

Jamaica (E/CONF.82/C.1/L.9)

Replace the last two sentences of paragraph 7 by the following text or add it as a separate paragraph:

"In considering requests received pursuant to articles 3, 4 or 5, the requested State may refuse to comply with such requests where there are substantial grounds leading its competent judicial or executive authorities to believe that compliance would facilitate the prosecution of, punishment of, or forfeiture of assets belonging to any person on account of his race, religion, nationality, or political opinions or would cause prejudice for any of those reasons to any person affected by the request."

Paragraph 8

Mexico (E/CONF.82/3, annex IV, p. 109)

Amend paragraph 8 to read as follows:

"Nothing contained in this article shall affect the principle that the description of the offences to which it refers is reserved to the domestic law of a Party and that such offences shall be *investigated*, prosecuted, *tried* and punished in conformity with that law."

Working Group, Committee I (E/CONF.82/C.1/L.25)

Amend paragraph 8 to read as follows:

"Nothing contained in this article shall affect the principle that the description of the offences to which

it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law."

Definition of "illicit traffic"

Working Group, Committee I (E/CONF.82/C.1/L.25)

"'Illicit traffic' means those offences set forth in article 2, paragraphs 1 and 1 *ter*."

III. PROCEEDINGS OF COMMITTEE I

A. *Meetings*

4. Committee I discussed article 2, and the amendments thereto, at its 1st to 25th meetings, from 28 November to 12 December 1988.

B. *Consideration and decisions*

Paragraph 1

5. After an exchange of views on paragraph 1 of article 2, the Committee decided at its 4th meeting to set up a working group to reach agreement on the provisions of paragraphs 1 and 2 of article 2 taking into consideration the various proposals to reformulate or amend paragraph 1 as contained in the basic proposal.

6. At its 23rd meeting, the Committee considered a reformulated text of article 2, paragraph 1 and subparagraph 2(d), as well as a definition of illicit traffic which the Working Group had submitted for its consideration (E/CONF.82/C.1/L.25). It heard a statement from the Vice-Chairman of Committee I who acted as moderator of the Working Group explaining the considerations motivating the new text and its interpretations.

Subparagraph 1(a)

7. The Committee agreed on the text of subparagraph 1(a) as contained in the text proposed by the Working Group.

8. The representative of Bolivia expressed his reservation with regard to the provision of the subparagraph.

9. The Committee decided to change the words "List A and List B" to "Schedule I and Schedule II", in conformity with the terminology used in article 8 as agreed by Committee II.

10. The Drafting Committee was requested to ensure consistency between articles 2 and 8 regarding the inclusion of the term "processing" in subparagraph (a)(iii).

Subparagraph 1(b)

11. The Committee agreed on the text of subparagraph 1(b) as contained in the text proposed by the Working Group. With regard to the phrase "to escape the legal

consequences of his actions" in subparagraph (b)(i), the attention of the Drafting Committee was drawn to the propriety and placement of this clause.

Subparagraph 1(c)

12. The Committee agreed on subparagraph 1(c) as contained in the text proposed by the Working Group with the understanding that the expression "basic concepts of its legal system" was to be understood in a broad sense as referring to the basic principles governing the law of each Party.

13. The Committee requested the Drafting Committee to find suitable and corresponding words in the various languages that would convey the meaning of the words "principles" and "concepts" in the introductory clause.

14. As regards the term "processing" in subparagraph (c)(ii), the Drafting Committee was requested to ensure consistency between articles 2 and 8 regarding the inclusion of that term.

15. The Committee decided to change the terms "List A and List B" to "Schedule I and Schedule II", in conformity with the terminology used in article 8 as agreed by Committee II.

New paragraph 1 bis

16. The Committee agreed on the text of paragraph 1 bis as contained in the text proposed by the Working Group with the replacement of the words "paragraph 1" with the words "this article".

New paragraph 1 ter

17. The Committee agreed on the text of the additional paragraph 1 ter as proposed by the Working Group.

18. The Committee agreed on the proposal to place the text of paragraph 1 ter before the text of paragraph 1 bis.

19. The representative of Bolivia expressed his reservation with regard to the provision of paragraph 1 ter.

Paragraph 2

Subparagraph 2(a)

20. The Committee agreed on the text of subparagraph 2(a) as contained in the basic proposal with the replacement of the word "forfeiture" by the word "confiscation" in keeping with the terminology used in article 3.

Subparagraph 2(b)

21. The Committee agreed on the text of subparagraph 2(b) as contained in the basic proposal with the insertion of the words "for an offence set forth in paragraph 1 of this article" after the word "punishment" to bring the provision in line with the wording of subparagraph 2(a).

Subparagraph 2(c)

22. The Committee agreed to retain subparagraph 2(c) as contained in the basic proposal.

Subparagraph 2(d)

23. The Committee accepted the text of an additional subparagraph 2(d) as submitted by the Working Group (E/CONF.82/C.1/L.25). The words "1 ter" were replaced by the words "1 bis" in accordance with the decision to change the order of these two paragraphs (see paragraph 18 above).

Paragraph 3

24. Following various oral suggestions, the Committee agreed to amend paragraph 3 as follows:

Introductory sentence of paragraph 3

25. The Committee agreed to amend the introductory sentence of paragraph 3 by inserting the words "and other competent authorities having jurisdiction" between the words "courts" and "can" in the first line and to delete the word "may" in the second line.

26. The new formulation was understood to provide a balance between the desire to strengthen the paragraph and the need to preserve the independence of the judiciary.

Subparagraphs 3(a)-(g) and proposed new subparagraphs 3(f) bis and 3(f) ter

27. Subparagraphs 3(a)-(g) of the basic proposal were agreed upon with the following amendments and understandings.

28. With regard to subparagraph 3(d), the Committee agreed that the provision should read as follows: "use of violence or arms by the offender". In connection with 3(f), the Committee agreed on the language of the basic proposal on the understanding that the word "use" encompassed the concept of "exploitation" and that the Spanish text should specifically refer to "*menores de edad*". Subparagraph 3(g) was agreed upon following the insertion of the words "particularly for similar offences" between the words "conviction" and "whether".

29. The Committee accepted the proposed new subparagraph 3(f) bis (E/CONF.82/C.1/L.8) as amended in the course of the discussion to read as follows: "the fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity". The representative of the Federal Republic of Germany expressed reservation regarding this subparagraph.

30. The Committee decided against the inclusion of the proposed new subparagraph 3(f) ter (E/CONF.82/C.1/L.10), but in the light of the discussion, agreed instead to insert at the end of the new subparagraph 3(f) bis (see paragraph above) the following provision: "or in other places to which schoolchildren and students resort for educational, sports and social activities".

Proposed new paragraph 3 bis

31. The representative of Mexico introduced the text of paragraph 3 *bis* as proposed by his delegation (E/CONF.82/3, annex IV, pp. 108-109).

32. Following discussion of the proposed additional paragraph and informal consultations, the Committee considered a reformulated text sponsored by several delegations (E/CONF.82/C.1/L.14). The Committee agreed on an amended reformulation of the new paragraph 3 *bis* to read as follows:

"The Parties shall endeavour to ensure that any national discretionary legal powers relating to the prosecution of persons for offences set forth in this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences."

Paragraph 4

33. The Committee agreed on the provision of paragraph 4 of the basic proposal with the insertion of the words "ensure that their courts or other competent authorities" between the words "shall" and "bear" and the inclusion of the words "and of the circumstances enumerated in paragraph 3" after the words "enumerated in paragraph 1".

Paragraph 5

34. Following general discussion, the Committee agreed on the proposed reformulation of paragraph 5, proposed by Canada and Mexico (E/CONF.82/C.1/L.7/Rev.1) amended to read as follows:

"Each Party shall establish, where appropriate, rigorous provisions governing the statute of limitations applicable to offences set forth in paragraph 1. Such provisions shall be made more rigorous to take into account that the offender evades the administration of justice of a Party."

35. The Committee, while agreeing on the text of paragraph 5, was not fully satisfied with the use of the word "rigorous" and accordingly requested the Drafting Committee to find a more appropriate word or more suitable formulation to convey the idea that within the statute of limitations an extensive time limit should be made applicable to offences set forth in paragraph 1.

Paragraph 6

36. The Committee agreed on paragraph 6 as contained in the basic proposal.

Paragraph 7

37. Following discussion and various oral suggestions the Committee agreed to amend the text of paragraph 7 contained in the basic proposal to read as follows:

"For the purpose of cooperation between Parties under this Convention, including, in particular, cooperation under articles 3, 4, 5 and 6, offences established in

accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties."

38. The representative of Norway, on behalf of his delegation and those of Denmark, Finland and Sweden, expressed reservation on this provision.

Paragraph 8

39. The Committee considered the provision of paragraph 8 of the basic proposal with the amendment of Mexico (E/CONF.82/3, annex IV, p. 109) as further amended by the Working Group (E/CONF.82/C.1/L.25). The Committee agreed on the text of paragraph 8 thus amended.

*Definitions pertaining to article 2**Illicit traffic*

40. The Committee agreed on the definition of illicit traffic as contained in the text submitted by the Working Group (E/CONF.82/C.1/L.25) reading as follows:

"*'Illicit traffic'* means those offences set forth in article 2, paragraphs 1 and 1 *ter*."

41. In keeping with its decision regarding the placing of paragraph 1 *ter* before paragraph 1 *bis* (see paragraph 18 above), the Committee agreed to amend the above text accordingly.

42. The representatives of Bolivia, Peru and Venezuela expressed their reservations with regard to the above definition.

Other definitions for inclusion in article 1

43. The Committee agreed on the definition of "Board", "Commission", "Council" and "Secretary-General" as contained in the basic proposal. It decided that the terms "concealment" and "laundering" did not warrant a specific definition as the term "concealment" was sufficiently explicit in the substantive provisions and the term "laundering" was no longer used in the body of the Convention.

Introductory sentence of article 1

44. The Committee agreed on the following introductory sentence of article 1 on definitions which would qualify the terms used therein:

"Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the Convention:"

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

45. The Committee agreed on the following text which is being transmitted to the Drafting Committee for its consideration:

"1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

"(a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, or to the Convention on Psychotropic Substances;

"(i) *bis* The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

"(ii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

"(iii) The manufacture, transport or distribution of equipment or materials such as substances listed in Schedule I and Schedule II knowing that they are to be used in or for the illicit cultivation, production, processing or manufacture of narcotic drugs or psychotropic substances;

"(iv) The organization, management or financing of any of the offences enumerated in (i), (i) *bis*, (ii) or (iii) above;

"(b) (i) The conversion or transfer of property knowing that such property is derived from any offence or offences set forth in subparagraph (a) above, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or for the purpose of assisting any person who is involved in the commission of such an offence or offences, set forth in subparagraph (a) above, to escape the legal consequences of his actions;

"(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences set forth in subparagraph (a) above or from an act of participation in such an offence or offences.

"(c) Subject to its constitutional principles and basic concepts of its legal system,

"(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an

offence or offences set forth in subparagraph (a) above or from an act of participation in such offence or offences;

"(ii) The possession of equipment or materials such as the substances listed in Schedule I and Schedule II, knowing that they are being or to be used in or for the illicit cultivation, production, (processing) or manufacture of a narcotic drug or psychotropic substance;

"(ii) *bis* Publicly inciting or inducing others, by any means, to commit any of the offences established pursuant to this article or to use a narcotic drug or psychotropic substance illicitly;

"(iii) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offence or offences established pursuant to this article.

"1 *bis*. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of a narcotic drug or a psychotropic substance for personal consumption contrary to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, or to the Convention on Psychotropic Substances.

"1 *ter*. Knowledge, intent, or purpose required as an element of an offence set forth in paragraph 1 may be inferred from objective factual circumstances.

"2. (a) Each Party shall make the commission of the offences set forth in paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

"(b) Parties may provide, in addition to conviction or punishment, for an offence set forth in paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

"(c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

"(d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 1 *bis*, measures for the treatment, education, aftercare, rehabilitation and social reintegration of the offender.

"3. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences set forth in paragraph 1 particularly serious, such as:

"(a) The involvement in the offence of an organized criminal group to which the offender belongs;

"(b) The involvement of the offender in other international organized criminal activities;

"(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;

"(d) The use of violence or arms by the offender;

"(e) The fact that the offender holds a public office and that the offence is connected with the office in question;

"(f) The victimization or use of minors;

"(f) *bis* The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which schoolchildren and students resort for educational, sports and social activities;

"(g) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

"3 *bis*. The Parties shall endeavour to ensure that any national discretionary legal powers relating to the prosecution of persons for offences set forth in this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

"4. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 and of the circumstances enumerated in paragraph 3 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

"5. Each Party shall establish, where appropriate, rigorous provisions governing the statute of limitations applicable to offences set forth in paragraph 1. Such provisions shall be made more rigorous to take into account that the offender evades the administration of justice of a Party.

"6. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence specified in paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.

"7. For the purpose of cooperation between Parties under this Convention, including, in particular, cooperation under articles 3, 4, 5 and 6, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

"8. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law."

A. Definition of "illicit traffic"

"Illicit traffic" means those offences set forth in article 2, paragraphs 1 and 1 *bis*.

B. Other definitions for inclusion in article 1

"Board" means the International Narcotics Control Board.

"Commission" means the Commission on Narcotic Drugs of the Council.

"Council" means the Economic and Social Council of the United Nations.

"Secretary-General" means the Secretary-General of the United Nations.

C. Introductory sentence of article 1

"Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the Convention:"

DOCUMENT E/CONF.82/C.1/L.18/ADD.4

[Original: English]
[15 December 1988]

Article 2 *bis*

I. BASIC PROPOSAL

1. The text of article 2 *bis* which was before the Conference in document E/CONF.82/3 read as follows:

"Article 2 *bis*

"JURISDICTION

"1. Each Party:

"(a) Shall take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

"(i) The offence is committed in its territory;

"(ii) The offence is committed on board a ship or aircraft which is registered under its laws at the time the offence is committed;

“(b) May take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

- “(i) The offence is committed by a national, or by a person who has his habitual residence in its territory, [if in both cases the alleged offender is located in its territory];
- “(ii) The offence is committed on board a ship which that Party has received prior permission to seize pursuant to article 12, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 5 and 7 of that article;
- “[(iii) The offence is one of those listed in article 2, paragraph 1, subparagraph (b)(iii) and is committed outside its territory [as a preparatory act] with a view to the commission, within its territory, of an offence set forth in article 2, paragraph 1.]

“[2. Each Party:

“[(a) Shall also take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

- “(i) That the offence has been committed in its territory or on board a ship or aircraft which was registered under its laws at the time the offence was committed, or
- “(ii) That the offence has been committed by a national or by a person who has his habitual residence in its territory [if in both cases the alleged offender is located in its territory];
- “[(iii) That the alleged offender is facing the death penalty in the requesting State;]
- “[(iii) That the penalty imposed in the requesting State would be more severe than in the requested State;]]

“[(b) May also take such measures as may be necessary to [establish] [exercise] its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on any other ground than those specified in subparagraph (a) above.]]

“3. This Convention does not exclude the exercise of any criminal jurisdiction established in accordance with domestic law.”

II. AMENDMENTS

2. Amendments were submitted to article 2 *bis* by the German Democratic Republic (E/CONF.82/C.1/L.22),

Denmark, Finland, Norway and Sweden (E/CONF.82/C.1/L.23) and Israel (E/CONF.82/C.1/L.24).

3. These amendments were to the following effect:

Subparagraph 1(a)(ii)

German Democratic Republic (E/CONF.82/C.1/L.22)

Amend subparagraph 1(a)(ii) to read as follows:

“the offence is committed on board a ship *flying its flag* or aircraft which is registered under its laws at the time the offence is committed;”

Reformulated article 2 bis

Denmark, Finland, Norway and Sweden (E/CONF.82/C.1/L.23)

Replace the text of article 2 *bis* with the following:

“1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

- “(a) (i) The offence is committed in its territory;
- “(ii) The offence is committed on board a ship or aircraft which is registered under its laws at the time the offence is committed;

“(b) Subject to its constitutional limitations and the basic principles of its legal system,

- “(i) The offence is committed by a national or by a person who has his habitual residence in its territory;
- “(ii) The offence is committed on board a ship which that Party has received prior permission to seize pursuant to article 12, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 5 and 7 of that article;
- “(iii) The offence is one of those listed in article 2, paragraph 1, subparagraph (b)(iii) and is committed outside its territory with a view to the commission, within its territory, of an offence set forth in article 2, paragraph 1;
- “(iv) The alleged offender is present in its territory and it does not extradite him at the request of another Party.

“2. This Convention does not exclude the exercise of any criminal jurisdiction established in accordance with domestic law.”

Israel (E/CONF.82/C.1/L.24)

Replace the text of article 2 *bis* with the following:

“1. Each Party:

“(a) Shall take such measures as may be necessary to establish and exercise its jurisdiction over the

offences it has established in accordance with article 2, paragraph 1, when:

- “(i) The offence is committed in its territory;
- “(ii) The offence is committed on board a ship or aircraft which is registered under its laws at the time the offence is committed;
- “(iii) The offence is committed by a national or by a person who has his habitual residence in its territory;
- “(iv) The alleged offender is present in its territory and it does not extradite him to any of the States which have established jurisdiction in accordance with paragraphs (i), (ii) or (iii);

“(b) May take such measures as may be necessary to establish and exercise its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

- “(i) The offence is committed on board a ship which that Party has received prior permission to seize pursuant to article 12, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 5 and 7 of that article;
- “(ii) The offence is one of those listed in article 2, paragraph 1, subparagraph (b)(iii) and is committed outside its territory (as a preparatory act) with a view to the commission, within its territory, of an offence set forth in article 2.

“2. This Convention does not exclude the exercise of any criminal jurisdiction established in accordance with domestic law.”

III. PROCEEDINGS OF COMMITTEE I

A. Meetings

4. Committee I discussed article 2 *bis*, and the amendments thereto, at its 18th, 19th, 21st, 22nd and 33rd meetings from 7 to 15 December 1988.

B. Consideration and decisions

Paragraph 1

Introductory sentence of subparagraph 1(a)

5. The Committee agreed to retain the introductory sentence as contained in the basic proposal with the deletion of the word “exercise”.

6. The representative of the Philippines expressed his reservation with regard to the deletion of the word “exercise”.

Subparagraph 1(a)(i)

7. The Committee agreed to retain subparagraph 1(a)(i) as contained in the basic proposal.

Subparagraph 1(a)(ii)

8. With regard to subparagraph 1(a)(ii), the Committee accepted the amendment proposed by the German Democratic Republic (E/CONF.82/C.1/L.22) to insert the words “flying its flag” after the word “ship” and agreed on the text of the basic proposal thus modified.

9. The Drafting Committee was requested to consider the advisability of replacing the word “ship” by the word “vessel”.

Introductory sentence of subparagraph 1(b)

10. The Committee decided to maintain the optional character of the provision and therefore agreed to retain the formulation contained in the basic proposal. It moreover agreed to delete the word “exercise”.

Subparagraph 1(b)(i)

11. The Committee agreed on the text of the subparagraph 1(b)(i) as contained in the basic proposal, with the deletion of the words in square brackets and on the understanding that it did not derogate from the provision of subparagraph 1(a)(i) with regard to the obligation of Parties to establish their jurisdiction over offences committed in their territories.

12. The representative of the Philippines expressed reservation on the provision.

Subparagraph 1(b)(ii)

13. In view of its substantial connection with the provisions of article 12 dealing with illicit traffic by sea, the Committee heard a statement from the Rapporteur of Committee II regarding the final text of article 12 as agreed upon by that Committee.

14. In the light of the new formulation of article 12, the representative of Australia orally proposed a redraft of paragraph 1(b) *bis* which, as amended by the representative of the United States of America, was agreed on by the Committee.

15. It was the understanding of the Committee that the expression “has been authorized” used in the subparagraph, implied that authorization would have been given prior to appropriate action pursuant to article 12.

Subparagraph 1(b)(iii)

16. The Committee agreed on the text of subparagraph 1(b)(iii) as contained in the basic proposal with the deletion of the words “as a preparatory act” and the replacement of the words “set forth in” by the words “established in accordance with”.

Paragraph 2

17. The Committee focused its consideration of paragraph 2 on the text contained in the basic proposal and on the reformulation of the paragraph proposed by Denmark, Finland, Norway and Sweden (E/CONF.82/C.1/L.23).

18. Following general discussion of the proposals, the Committee considered a compromise formulation aimed at conciliating the views of those representatives who argued for the deletion of the paragraph, of those who favoured an amended formulation of the text contained in document E/CONF.82/C.1/L.23, and of those who supported the retention of the structure and substance of the provision contained in the basic proposal amended so as to specify only two grounds for refusal of extradition.

19. The Committee thereupon agreed on the following amendments to the text of paragraph 2 contained in the basic proposal:

(a) In the introductory sentence of subparagraph 2(a) delete the word "exercise";

(b) In subparagraph 2(a)(i) insert the words "flying its flag" after the word "ship";

(c) Limit subparagraph 2(a)(ii) to stating "that the offence has been committed by a national";

(d) Delete both versions of subparagraph 2(a)(iii);

(e) Delete the word "exercise" and the words "on any other ground than those specified in subparagraph (a) above" in subparagraph 2(b).

20. The Committee agreed on the text of paragraph 2 thus amended. Reservations were expressed by the representatives of the Philippines concerning subparagraph 2(a)(ii) and by the representative of Malaysia concerning subparagraph 2(b).

Paragraph 3

21. The Committee agreed on the text of paragraph 3 as contained in the basic proposal.

IV. TEXT SUBMITTED TO THE DRAFTING COMMITTEE

22. The Committee agreed on the following text which is being transmitted to the Drafting Committee for its consideration:

"1. Each Party:

"(a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

"(i) The offence is committed in its territory;

"(ii) The offence is committed on board a ship flying its flag or aircraft which is registered under its laws at the time the offence is committed;

"(b) May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when:

"(i) The offence is committed by a national, or by a person who has his habitual residence in its territory;

"(ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 12, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;

"(iii) The offence is one of those listed in article 2, paragraph 1, subparagraph (b)(iii) and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 2, paragraph 1.

"2. Each Party:

"(a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

"(i) That the offence has been committed in its territory or on board a ship flying its flag or aircraft which was registered under its laws at the time the offence was committed; or

"(ii) That the offence has been committed by a national;

"(b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 2, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

"3. This Convention does not exclude the exercise of any criminal jurisdiction established in accordance with domestic law."

DOCUMENT E/CONF.82/C.1/L.18/ADD.2

[Original: English]
[6 December 1988]

Article 3

I. BASIC PROPOSAL

1. The text of article 3 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 3

"1. Proceeds, narcotic drugs and psychotropic substances, materials and equipment, and other instrumentalities derived from or used in offences established in accordance with article 2, paragraph 1, shall be liable to confiscation. To that end, each Party shall adopt such measures as may be necessary to enable confiscation of:

"(a) Proceeds derived from offences established in accordance with article 2, paragraph 1, or property the value of which corresponds to that of such proceeds;

“(b) Narcotic drugs and psychotropic substances used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1;

“(c) Materials and equipment used in or intended for use in the illicit production, processing or manufacture of such drugs or substances;

“(d) Other instrumentalities used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1.

“2. Each Party shall also adopt such measures as may be necessary to enable it to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of the eventual confiscation.

“3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

“4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

“(i) Seek an order of confiscation from its competent authorities and, if such an order is granted, give effect to it; or

“(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1, as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1, situated in the territory of the requested Party.

“(b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, the requested Party shall take measures to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 for the purpose of an eventual confiscation to be ordered either in the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, in the requested Party.

“[(c) Any decision or action taken by the requested Party pursuant to subparagraphs (a) and (b) of this paragraph shall be in accordance with and subject to the conditions of its domestic law and any bilateral or multilateral treaty, agreement or arrangement to which it is bound in relation to the requesting Party.]

“(d) The provisions of article 5, paragraphs [“relevant provisions”] are applicable *mutatis mutandis*. In addition to the information listed in paragraph [8] of article 5, requests made pursuant to the present article shall contain the following:

“(i) In the case of a request pertaining to subparagraph (a)(i), a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

“(ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by a court of the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

“(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

“(e) Each Party shall, through a notification to the Secretary-General of the United Nations, indicate which procedure, provided for in subparagraph (a), it will apply when acting at the request of other Parties pursuant to this article.

“(f) [A Party may elect to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty.] [In such a case, a Party may consider this Convention as the necessary treaty basis.] The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to carry out or to enhance the effectiveness of international cooperation pursuant to this article.

“5. (a) Proceeds or property that have been confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its law and administrative procedures.

“(b) When acting on the request of another Party in accordance with this article, the Parties may give special consideration to concluding agreements on:

“(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against the illicit traffic in and abuse of narcotic drugs and psychotropic substances;

“(ii) Sharing, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, with other Parties, in a manner provided by its law, administrative procedure or bilateral or multilateral agreements entered into for this purpose.

“6. (a) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any seizure or freezing powers, be liable to confiscation up to the value corresponding to the assessed value of the intermingled proceeds.

"(b) If proceeds have been transformed or converted into other property such other property shall be liable to measures referred to in this article in lieu of the proceeds.

"(c) Income or other benefits [clearly identified as being] derived from:

- "(i) Proceeds;
- "(ii) Property into which proceeds have been transformed or converted; or
- "(iii) Property with which proceeds have been intermingled;

[shall] may also be liable to such measures.

"7. Each Party may consider ensuring that the onus of proof be reversed regarding the legitimacy of proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial proceedings.

"8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

"9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in conformity with and under the conditions established by the domestic law of a Party."

II. AMENDMENTS

2. Amendments were submitted to article 3 by Mexico (E/CONF.82/3, annex IV, p. 110), German Democratic Republic (E/CONF.82/C.1/L.2), Netherlands (E/CONF.82/C.1/L.11), India (E/CONF.82/C.1/L.12), France (E/CONF.82/C.1/L.15), United States of America (E/CONF.82/C.1/L.16), Germany, Federal Republic of, Mexico, Netherlands, Spain and Venezuela (E/CONF.82/C.1/L.17) and Yemen (E/CONF.82/C.1/L.20).

3. These amendments were to the following effect:

Paragraph 1

German Democratic Republic (E/CONF.82/C.1/L.2)

Amend paragraph 1 and insert title to read as follows:

"CONFISCATION

"1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

"(a) Proceeds derived from offences established in accordance with article 2, paragraph 1, or property the value of which corresponds to that of such proceeds;

"(b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities derived from or used in or intended for use in offences established in accordance with article 2, paragraph 1."

India (E/CONF.82/C.1/L.12)

Amend the introductory sentence of paragraph 1 and subparagraph 1(b) to read as follows:

"*Property, proceeds, narcotic drugs and psychotropic substances, substances in List A and List B, materials and equipment, and other instrumentalities derived from or used in offences established in accordance with article 2, paragraph 1, shall be liable to confiscation or forfeiture. To that end, each Party shall adopt such measures as may be necessary to enable confiscation or forfeiture of:*

"[...]"

"(b) Narcotic drugs and psychotropic substances and the substances in List A and List B used in or intended for use in the commission of offences established in accordance with article 2, paragraph 1;"

Mexico (E/CONF.82/3, annex IV, p. 110)

Amend subparagraph 1(a) to read as follows:

"Proceeds derived from offences established in accordance with article 2, paragraph 1, or *related* property the value of which corresponds to that of such proceeds;"

Paragraphs 2, 3 and subparagraphs 4(a) to 4(b)

Mexico (E/CONF.82/3, annex IV, p. 110)

Amend paragraphs 2, 3 and subparagraph 4(a) to 4(b) to read as follows:

"2. Each Party *undertakes to approach its competent legislative bodies to initiate* such measures as may be necessary to enable its *competent national authorities, if they have not already done so*, to identify, trace, freeze or place under preventive embargo or seize or secure proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of the eventual confiscation.

"3. In order to carry out the measures referred to in this article, each Party *undertakes to approach its competent legislative bodies in order to initiate the necessary measures* to empower its courts or other competent authorities, *if they have not already done so*, to order, *to the extent explicitly permitted by its national legislation and in strict conformity with the same*, that bank, financial or commercial records be made available or be seized or secured. A Party shall *only invoke* bank secrecy to decline to act under the provisions of this paragraph *when this is essential in order to adhere strictly to the said national legislation*.

"4. (a) (i) Seek an order of *seizure or securing* from its competent authorities and, if such an order is granted, give effect to it; or

"(ii) Submit to its competent authorities, with a view to giving effect to it, an order of *seizure or securing* issued by the requesting Party in accordance with paragraph 1, to the extent to which it relates

to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

“(b) Following a request made by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, and in conformity with the relevant paragraphs of article 5, the requested Party shall take measures designed to ensure that its competent authorities identify, trace, freeze or place under preventive embargo or seize or secure proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of an eventual confiscation to be ordered, subject to the provisions of subparagraph (c) of this paragraph either in the requesting Party or, pursuant to a request under section (a) in the requested Party.”

Subparagraph 4(c)

France (E/CONF.82/C.1/L.15)

Replace subparagraph 4(c) by the following text:

“The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with its domestic law and its procedural rules or any bilateral or multi-lateral treaty, agreement or arrangement to which it is bound in relation to the requesting Party.”

Subparagraph 4(e)

Germany, Federal Republic of, Mexico, Netherlands, Spain and Venezuela (E/CONF.82/C.1/L.17)

Replace subparagraph 4(e) with the following:

“Each Party shall furnish to the Secretary-General the text of its laws and regulations promulgated to give effect to this paragraph and of any subsequent changes to such laws and regulations.”

Subparagraph 6(c)

Yemen (E/CONF.82/C.1/L.20)

Replace subparagraph 6(c) with the following:

“Income derived from:

“(a) Proceeds;

“(b) Property resulting from proceeds or proceeds which have been converted into property;

“(c) Property with which proceeds have been intermingled up to the value of the proceeds

“shall be liable to such measures.”

Paragraph 8

Netherlands (E/CONF.82/C.1/L.11)

Add the following sentence to paragraph 8:

“Each Party may, however, consider providing that, if particular circumstances so warrant and to the extent

consistent with the principles of its domestic law, the onus of proof be reversed regarding the question whether parties were acting in good faith when transferring ownership rights of, or vesting real or personal rights in, property constituting proceeds.”

Yemen (E/CONF.82/C.1/L.20)

Replace paragraph 8 with the following:

“The provisions of this article shall not be construed as prejudicing the rights of a bona fide third party to recover the value which has been paid by it.”

III. PROCEEDINGS OF COMMITTEE I

A. Meetings

4. Committee I discussed article 3, and the amendments thereto, at its 5th to 13th meetings from 30 November to 5 December 1988.

B. Consideration and decisions

Paragraph 1

5. The Committee considered the proposed amendments to the basic proposal proposed by the representatives of India (E/CONF.82/C.1/L.12) and Mexico (E/CONF.82/3, annex IV, p. 110) and the replacement of paragraph 1 by a more concise draft proposed by the German Democratic Republic (E/CONF.82/C.1/L.2).

6. Following an exchange of views the representative of Mexico withdrew his amendment to subparagraph 1(a).

7. With regard to the insertion of the words “substances in List A and List B” after the words “psychotropic substances” in paragraph 1 and subparagraph 1(b) as proposed in the amendment submitted by India, the Committee decided that it would not be appropriate to include these words in this provision pending the outcome of the deliberations on article 2, paragraph 1. Concerning the use of the words “confiscation” and “forfeiture” the Committee decided to make it explicit in article 1 on definitions that the word “confiscation”, as used in this article, was meant to encompass the concept of forfeiture. It was also agreed to define the words “property” and “proceeds” in article 1.

8. Following consideration of the reformulation of paragraph 1 as proposed by the German Democratic Republic (E/CONF.82/C.1/L.2), and taking into account oral suggestions, the Committee agreed on the new draft with the deletion of the words “derived from or” after the word “instrumentalities” and the insertion of the words “in any manner” between the words “use” and “in” in subparagraph 1(b).

Paragraph 2

9. The representative of Mexico introduced the proposed amendments to paragraph 2 contained in document E/CONF.82/3, annex IV, page 110. Following discussion the representative of Mexico withdrew the proposed amendment.

10. The Committee agreed on the text of the basic proposal with the insertion of the words "its competent authorities" after the word "enable" and the consequential deletion of the word "it" in the second line.

11. The Committee requested the Drafting Committee to find an appropriate term in the different language versions, particularly the Spanish version, to convey the concept of "freezing".

Paragraph 3

12. The representative of Mexico introduced the amendment to paragraph 3 contained in document E/CONF.82/3, annex IV, page 110. The amendment was withdrawn, account being taken of the fact that paragraph 9 of the article would cover the concern motivating the amendment.

13. The Committee agreed on the text of paragraph 3 of the basic proposal.

Paragraph 4

Subparagraph 4(a) to 4(a)(ii)

14. The Committee agreed on the text of subparagraph 4(a) of the basic proposal.

15. The representative of Mexico withdrew his amendment to subparagraph 4(a)(i) (E/CONF.82/3, annex IV).

16. The Committee agreed on a reformulation of subparagraph 4(a)(i) proposed by the United States of America (E/CONF.82/C.1/L.16) which read as follows:

- "(i) Submit the request to its competent authorities for the purpose of seeking an order of confiscation, and, if such order is granted, give effect to it; or"

17. The Committee requested the Drafting Committee to ensure concordance in the formulation of the provision in the various languages, and consider in particular, whether the word "obtaining" may be used as an alternative to the word "seeking" in the second line.

18. The Committee agreed on the text of the basic proposal regarding subparagraph 4(a)(ii). The Committee requested the Drafting Committee to ensure concordance between the texts in the various languages, particularly with regard to the words "giving effect to it to the extent requested".

Subparagraph 4(b)

19. The Committee agreed on the text of subparagraph 4(b) as contained in the basic proposal.

Subparagraph 4(c)

20. The Committee considered a reformulation of subparagraph 4(c) proposed by the representative of France (E/CONF.82/C.1/L.15). Following discussion, the Committee agreed on the proposed text amended to read as follows:

"The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the conditions of its domestic law and in accordance with its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party."

Subparagraph 4(d) to 4(d)(iii)

21. The Committee agreed to retain in subparagraph 4(d) a reference to the relevant provisions of article 5 dealing with mutual judicial assistance. It decided to bring the provision of the subparagraph in line with article 5 after completion of its consideration of that article.

22. The Committee agreed on the texts of subparagraphs 4(d)(i), 4(d)(ii) and 4(d)(iii) as contained in the basic proposal with the deletion of the words "a court of" in subparagraph 4(d)(ii).

Subparagraph 4(e)

23. There was general agreement to delete the provision of subparagraph 4(e) as formulated in the basic proposal.

24. The Committee considered an alternative text of subparagraph 4(e) sponsored by several delegations (E/CONF.82/C.1/L.17). Following general discussion and informal consultations, the Committee agreed on this text amended to read as follows:

"Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations."

Subparagraph 4(f) and additional subparagraph 4(g)

25. The Committee decided to separate the provisions of subparagraph 3(f) of the basic proposal into subparagraphs 4(f) and 4(g). The first two sentences of subparagraph 4(f) of the basic proposal were merged and amended to read as follows:

"If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis."

26. The representatives of France and Japan expressed their reservation on this provision.

27. The third sentence of subparagraph 4(f) of the basic proposal, in an amended form, was made to constitute an additional subparagraph 4(g) to read as follows:

"The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article."

Paragraph 5

28. The Committee agreed on the text of subparagraph 5(a) of the basic proposal. It requested the Drafting

Committee to ensure concordance between the various languages particularly with regard to the Arabic version.

29. The Committee agreed on the text of subparagraph 5(b) of the basic proposal with the replacing, for grammatical reasons, of the words "the Parties" by the words "a Party" in the introductory sentence.

Paragraph 6

Subparagraph 6(a)

30. The Committee agreed on the text of subparagraph 6(a) on the understanding that its provisions did not prejudice the application of paragraph 8 of the article.

31. The representatives of Egypt and the Philippines expressed their reservation with regard to the substantive provisions of subparagraph 6(a).

Subparagraph 6(b)

32. The Committee agreed on the text of subparagraph 6(b) contained in the basic proposal on the understanding that the provisions also covered proceeds transferred to an individual or body corporate.

33. The representative of the Philippines expressed his reservation regarding the provision of the subparagraph.

Subparagraph 6(c)

34. The representative of Yemen introduced a proposed reformulation of subparagraph 6(c) (E/CONF.82/C.1/L.20).

35. Following discussion the Committee agreed to retain the text of subparagraph 6(c) as in the basic proposal with the deletion of the words "clearly identified as being" in the first line and the inclusion of the word "shall" in the last line. The Committee also agreed to add, at the end of the subparagraph, the following words: "to the extent that proceeds have been derived from an offence". The representatives of Canada and the United States expressed their reservation to the inclusion of the additional words since, if their proposed definition of "proceeds" (E/CONF.82/3, p. 108) was adopted, the additional phrase would be tautological.

36. It was the understanding of the Committee that the words "shall be liable", as used in paragraph 6, did not imply an obligation to confiscate in every case but that confiscation was a measure which could be applied.

37. The representatives of Austria, France, Japan, the Philippines and Switzerland expressed their reservation regarding the text of paragraph 6 as agreed by the Committee.

Paragraph 7

38. The Committee agreed on the text of paragraph 7 as in the basic proposal with the insertion of the words "and other" between the words "judicial" and "proceedings".

Paragraph 8

39. The representatives of the Netherlands and Yemen introduced their amendments to paragraph 8 (E/CONF.82/C.1/L.11 and E/CONF.82/C.1/L.20 respectively).

40. The Committee did not accept the additional words proposed by Yemen (E/CONF.82/C.1/L.20), nor the additional sentence proposed by the Netherlands (E/CONF.82/C.1/L.11), and agreed to retain the text of paragraph 8 as contained in the basic proposal.

41. As regards the amendment of the Netherlands, a further proposal was made to include its substance in paragraph 7. The Committee did not agree to this proposal.

42. The Committee decided to put on record its understanding that the provision of paragraph 8 as agreed would not be prejudiced by paragraphs 1 and 6 of this article.

Paragraph 9

43. The Committee decided to accept the text of paragraph 9 of the basic proposal.

Proposal by Jamaica (E/CONF.82/C.1/L.9)

44. The representative of Jamaica reintroduced, in the context of article 3, the amendment of his delegation relating to article 2, paragraph 7.

45. The amendment was withdrawn, account being taken that the concern motivating the amendment was covered by the reformulated subparagraph 4(c), and on the understanding that it would be more appropriate to consider it under articles 4 and 5.

Title of article 3

46. The Committee agreed that article 3 would be entitled "Confiscation".

Definitions pertaining to article 3

Confiscation and forfeiture

Basic proposal: "'Forfeiture' means the deprivation of proceeds by court order;"

Canada and the United States of America (E/CONF.82/3, annex IV, p. 107): "'Confiscation' means the deprivation of property by order of a court or other lawful authority;"

Mexico (E/CONF.82/3, annex IV, p. 106): "'Forfeiture' means the definitive deprivation of proceeds by court order;"

47. The Committee considered the definition of confiscation on the basis of the text submitted by the United States and Canada.

48. Following an exchange of views as to whether the terms "confiscation" or "forfeiture" were to be defined

separately or jointly, the Committee agreed, particularly since several countries only used the term "confiscation", to define the term "confiscation" and to indicate that it encompassed the concept of forfeiture.

49. Following discussion and suggestions the Committee agreed on the following definition:

"*Confiscation*", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;"

50. The Committee placed on record its understanding that the word "property" as used in the definition of "confiscation" also included "proceeds" and that the word "permanent" indicated that confiscation, being the final result of a process, was distinct from provisional measures.

Freezing and seizure

Basic proposal:

Variant A: "*Freezing*" means prohibiting the transfer, conversion, disposition or movement of proceeds by order of a court or other appropriate authority;"

Variant B: "*Freezing*" means temporarily prohibiting the transfer, conversion, disposition or movement of property;"

Variant A: "*Seizure*" means assuming custody or control of proceeds as directed by order of a court or other appropriate authority;

Variant B: "*Seizure*" means assuming custody or control of property by a competent authority."

Canada and United States (E/CONF.82/3, annex IV, p. 107): "*Freezing*" means temporarily prohibiting the transfer, conversion, disposition or movement of property;"

"*Seizure*" means assuming custody or control of property by a court or other competent authority;"

Mexico (E/CONF.82/3, annex IV, p. 106): "*Freezing*" or preventive embargo means the precautionary measures adopted by the competent authority consisting in temporarily prohibiting the transfer, conversion, disposition or movement of property;"

"*Seizure*" or securing means assuming custody or control of property by a competent authority;"

51. In view of the fact that the two terms are not necessarily used in all domestic legal systems and since the provisions in the article referred to freezing or seizure as alternative measures, the Committee, following general discussion, decided to combine the two terms in a single definition.

52. A joint definition of the terms proposed by Canada and reformulated by the United States, was agreed upon as follows:

"*Freezing*" or '*seizure*' means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of

property on the basis of an order issued by a court or a competent authority;"

Proceeds

Basic proposal: "*Proceeds*" means property of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such property."

Canada and United States (E/CONF.82/3, annex IV, p. 108): "*Proceeds*" means any property derived from or obtained, directly or indirectly through the Commission of an offence established in accordance with this Convention;"

53. The Committee considered the definition of the term "proceeds" on the basis of the text proposed by Canada and the United States.

54. The Committee agreed on the definition of the term "proceeds" as proposed by Canada and the United States (E/CONF.82/3, annex IV, p. 108) amended to read as follows:

"*Proceeds*" means any property derived from or obtained, directly or indirectly, through the Commission of an offence established in accordance with article 2;"

55. The representatives of Austria, France and Japan expressed their reservation with regard to the retention of the words "directly or indirectly" in the definition.

56. As regards the use of the expression "directly or indirectly", the Committee placed on record its understanding that the direct or indirect link which may exist between proceeds and offences would be specified and qualified by domestic law.

57. The Committee requested the Drafting Committee to ensure that the definition of proceeds fits in all instances where the term is used in the body of the article.

Property

Basic proposal: "*Property*" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such property or assets."

Canada and United States (E/CONF.82/3, annex IV, p. 108): "*Property*" means assets of every description and any other thing, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds or instruments evidencing title to, or interest in, such assets, or other things;"

58. The Committee considered the definition of the term "property" on the basis of the text proposed by Canada and the United States.

59. The Committee agreed to the oral amendment proposed by the representative of Bulgaria to replace the word "description" by the word "kind" and the word "deeds" by the words "legal documents" so as to avoid

difficulties of translation in the various languages and of legal interpretation. The Committee also agreed to delete the words "and any other thing".

60. The Committee agreed on the definition of "property" to read as follows:

"*Property*' means assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;"

61. The Committee placed on record its understanding that the word "assets", as used in the definition of property includes all forms of property and requested the Drafting Committee to find a corresponding term or formulation in the various languages to convey this broad meaning.

Legitimate third party

Basic proposal: "'Legitimate third party' means any person, corporation or other legal entity who, acting bona fide and without knowledge of incriminating circumstances, has lawfully acquired the right to own, use, control or possess proceeds;"

Yemen (E/CONF.82/C.1/L.19): "'Legitimate third party' means any natural or artificial person who, acting bona fide and without prior knowledge of incriminating circumstances, has lawfully acquired the right to recover the value which has been paid by it."

62. The Committee was of the view that since the term "legitimate" had been replaced by the term "bona fide" in paragraph 8 of article 3 there was no need for a specific definition of the expression "bona fide third party" which was well understood and generally accepted in domestic law. In view of this understanding the representative of Yemen withdrew his amendment.

63. The Committee decided to delete the definition of "legitimate third party" and to leave the interpretation of bona fide to each Party.

64. The representatives of the Netherlands and the Philippines expressed their reservation with regard to this decision.

65. The Committee requested the Drafting Committee to use in the various languages, wherever possible, the Latin words "bona fide" in view of the general understanding of its meaning in the various languages.

Instrumentalities

Canada and United States (E/CONF.82/3, annex IV, p. 108): "'Instrumentalities' means any property used in or intended for use in the commission of an offence established in accordance with this Convention;"

66. The Committee was of the view that the term "instrumentalities" did not require a specific definition as its meaning was obvious in the context where it was used.

67. The Committee agreed to delete the term and to leave its definition for the respective domestic legal systems.

Tracing

Basic proposal:

Variant A: "'Tracing' means determining the true nature, source, disposition, movement or ownership of proceeds;"

Variant B: "'Tracing' means determining the true nature, source, disposition, movement or ownership of property;"

Canada and United States (E/CONF.82/3, annex IV, p. 107): "'Tracing' means determining the nature, source, location, disposition, movement, interest in or ownership of property;"

68. The Committee agreed not to have any definition of the term "tracing" as it was self-explanatory in the context of article 3.

Title of article 1

69. The Committee agreed that article 1 should be entitled "Definitions".

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

70. The Committee agreed on the following text which is being transmitted to the Drafting Committee for its consideration:

"Article 3

"CONFISCATION

"1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

"(a) Proceeds derived from offences established in accordance with article 2, paragraph 1, or property the value of which corresponds to that of such proceeds;

"(b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in offences established in accordance with article 2, paragraph 1.

"2. Each Party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1, for the purpose of the eventual confiscation.

"3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

"4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an

offence established in accordance with article 2, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

- “(i) Submit the request to its competent authorities for the purpose of seeking an order of confiscation, and, if such order is granted, give effect to it; or
- “(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1, as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1, situated in the territory of the requested Party.

“(b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 2, paragraph 1, the requested Party shall take measures to identify, trace, freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 for the purpose of an eventual confiscation to be ordered either in the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, in the requested Party.

“(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the conditions of its domestic law and in accordance with its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.

“(d) The provisions of article 5, paragraphs [“relevant provisions”] are applicable *mutatis mutandis*. In addition to the information listed in paragraph [8] of article 5, requests made pursuant to the present article shall contain the following:

- “(i) In the case of a request pertaining to subparagraph (a)(i), a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
- “(ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;
- “(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

“(e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

“(f) If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.

“(g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

“5. (a) Proceeds or property that have been confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its law and administrative procedures.

“(b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:

- “(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against the illicit traffic in and abuse of narcotic drugs and psychotropic substances;
- “(ii) Sharing, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, with other Parties, in a manner provided by its law, administrative procedure or bilateral or multilateral agreements entered into for this purpose.

“6. (a) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any seizure or freezing powers, be liable to confiscation up to the value corresponding to the assessed value of the intermingled proceeds.

“(b) If proceeds have been transformed or converted into other property such other property shall be liable to measures referred to in this article in lieu of the proceeds.

“(c) Income or other benefits derived from:

- “(i) Proceeds;
- “(ii) Property into which proceeds have been transformed or converted; or
- “(iii) Property with which proceeds have been intermingled;

shall also be liable to such measures to the extent that proceeds have been derived from an offence.

“7. Each Party may consider ensuring that the onus of proof be reversed regarding the legitimacy of proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

“8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

"9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in conformity with and under the conditions established by the domestic law of a Party."

"Article 1

"DEFINITIONS

"*'Confiscation'*, which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;"

"*'Freezing'* or *'seizure'* means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;"

"*'Proceeds'* means any property derived from or obtained, directly or indirectly through the Commission of an offence established in accordance with article 2;"

"*'Property'* means assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;"

*DOCUMENT E/CONF.82/C.1/L.18/ADD.3**

*[Original: English]
[13 December 1988]*

Article 4

I. BASIC PROPOSAL

1. The text of article 4 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 4

"1. This article shall apply to the offences established by the Parties [concerned] in accordance with paragraph 1 of article 2 of this Convention.

"2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

"3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it [may] [shall] consider this Convention as the legal basis for extradition in respect of any offence to which this article applies.

"4. Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

"5. [Except as otherwise provided in this article,] extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

"6. [Subject to its constitutional limitations, legal system and domestic law,] Parties shall facilitate the extradition of persons accused or convicted of offences established in accordance with article 2, paragraph 1. [To this end, a request for extradition by another Party with respect to any of the offences to which this article applies shall not be refused on the ground that the person sought is a national of, or has his habitual residence in the territory of, the requested Party [, except in cases where refusal is required by the constitution or the [domestic legal system] [fundamental domestic law] [domestic law] of the requested Party.] A Party may elect or decline to consider this Convention as satisfying a requirement under its constitution or [domestic legal system] [fundamental domestic law] [domestic law] that extradition of nationals, or of persons having their habitual residence in its territory, be subject to the existence of a treaty. [If in regard to the persons referred to in this paragraph the national legislation of the requested Party grants for their extradition a discretionary power to its competent authorities, such Party will endeavour, as far as possible, to see such power exercised, taking into account the object and purpose of this Convention.]

"7. With respect to offences established in accordance with article 2, paragraph 1, the Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements thereto.

"7 *bis*. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

"8. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall,

"(a) If it does not extradite him in respect of an offence established in accordance with article 2, paragraph 1, on the grounds set forth in article 2 *bis*, paragraph 2(a), submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party;

"(b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 2 *bis*,

*Incorporating document E/CONF.82/C.1/L.18/Add.3/Corr.1.

paragraph 2, submit the case for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

"9. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence, or the remainder thereof, which has been imposed under the law of the requesting Party.

"10. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

"11. The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer of persons sentenced to deprivation of liberty for offences to which this article applies, to their country, in order that they may complete their sentences there."

II. AMENDMENTS

2. Amendments were submitted to article 4 by Yemen (E/CONF.82/C.1/L.21), Senegal (E/CONF.82/C.1/L.27), China (E/CONF.82/C.1/L.28), the Chairman of Committee I (E/CONF.82/C.1/L.29) and the United States of America (E/CONF.82/C.1/L.30).

3. These amendments were to the following effect:

Paragraph 3

Senegal (E/CONF.82/C.1/L.27)

Amend paragraph 3 to read as follows:

"If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies in the absence of national legislation on the subject. If not, the Party in question shall regard this Convention as the legal basis for the request for extradition."

Paragraph 6

Yemen (E/CONF.82/C.1/L.21)

Replace paragraph 6 with the following text:

"Subject to its constitutional and legal limitations, Parties shall facilitate the extradition of persons accused or convicted of offences established in accordance with paragraph 1 of this article.

"If the persons accused or convicted were nationals of, or have committed the offence or a part thereof in

the territory of, the requested Party, the requested Party shall take such action as may be necessary to bring those persons before justice in the country of the requested Party within the limits of its domestic law, taking into account the object and purpose of this Convention."

Chairman of Committee I (E/CONF.82/C.1/L.29)

Replace paragraph 6 with the following text:

"Parties shall facilitate the extradition of persons accused of or convicted of offences established in accordance with paragraph 1 of article 2.

"To that end, and having regard to the object and purpose of this Convention, where the law of a Party confers a discretionary power on competent authorities to grant extradition of its nationals or habitual residents, such Party shall endeavour to ensure, as far as possible, that the power is exercised."

New paragraph 7 bis

China (E/CONF.82/C.1/L.28)

Insert the following new paragraph 7 bis:

"Upon being satisfied that the circumstances so warrant and are urgent, any State Party in the territory of which the offender or the alleged offender is present shall, at the request of the requesting Party, and based on a valid arrest warrant issued by the requesting Party, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any extradition proceedings to be instituted, subject to the conditions stipulated in the domestic law of the requested Party."

United States of America (E/CONF.82/C.1/L.30)

Replace the text of paragraph 8 with the following:

"Without prejudice to the power of each Party to exercise jurisdiction in accordance with article 2 bis or with its domestic law, when a Party declines to extradite to another Party a person in respect of an offence established in accordance with article 2, paragraph 1, on the grounds set forth in paragraph 2(a) of article 2 bis, it shall, if requested by the requesting Party, submit the case without undue delay to its competent authorities for the purpose of prosecution."

III. PROCEEDINGS OF COMMITTEE I

A. Meetings

4. Committee I discussed article 4, and the amendments thereto, at its 13th to 17th, 19th to 23rd, and 25th to 27th meetings, held from 5 to 12 December 1988.

B. Consideration and decisions

Paragraph 1

5. The Committee agreed to retain paragraph 1 of article 4 of the basic proposal with the deletion of the word "concerned" to indicate the maximum scope of application of the article. It was the Committee's understanding that paragraph 1 was neutral with regard to the provisions of paragraph 5.

Paragraph 2

6. The Committee agreed to retain paragraph 2 as contained in the basic proposal.

Paragraph 3

7. The representative of Senegal introduced a proposed reformulation of paragraph 3 of the basic proposal the intent of which was to cover the concern of representatives who preferred the retention of the word "may" and those who favoured the word "shall" in the text contained in the basic proposal (E/CONF.82/C.1/L.27). The Committee did not agree to this proposal.

8. The Committee agreed to retain the text contained in the basic proposal with the deletion of the word "shall" and the addition of an additional sentence proposed orally by Canada and amended during the course of the discussion. The agreed text reads as follows:

"Parties which require detailed legislation in order to use this Convention as a legal basis for extradition, shall consider enacting such legislation as may be necessary."

Paragraph 4

9. The Committee agreed to retain paragraph 4 as contained in the basic proposal.

Paragraph 5

10. The Committee agreed on the text of paragraph 5 as contained in the basic proposal with the deletion of the words in square brackets at the beginning of the paragraph.

Paragraph 6

11. The Committee considered paragraph 6 of the basic proposal and the proposed reformulation of the paragraph by Yemen (E/CONF.82/C.1/L.21).

12. The representative of Egypt orally proposed the following text for subparagraph 6 the adoption of which would, in his view, also enable the Committee to dispense with paragraph 8:

"Without prejudice to their domestic laws, Parties shall facilitate the extradition of persons whether accused of, or sentenced for committing offences established in accordance with paragraph 1 of article 2.

"If the persons requested for extradition are nationals of, or have their habitual residence in the territory of, the requested Party, if the domestic law of this requested Party does not allow their extradition, and if the acts constituting the offence are committed in whole or in part in the territory of the requesting Party, the requested Party shall, when appropriate, bring those persons before the judicial or other competent authorities, for trial."

13. As an alternative to the deletion of paragraph 6 favoured by many representatives, the representative of Australia proposed the following single non-mandatory formulation covering both the issue of extradition of nationals dealt with in paragraph 6 and the provision on evidentiary requirements contained in paragraph 7:

"Parties shall facilitate the extradition of persons accused of, or convicted of, offences established in accordance with article 2, paragraph 1. To that end, and having regard to the object and purpose of this Convention, Parties shall endeavour to minimize

"(a) Their restrictions on the extradition of nationals or other persons having habitual residence in their territory;

"(b) Their procedural and evidentiary requirements for extradition."

14. Following further discussion of the various proposals, the Chairman proposed a compromise text borrowing from the basic proposal and the proposed reformulations by Australia and Yemen (E/CONF.82/C.1/L.29).

15. The Committee agreed that the first sentence of the paragraph as proposed by the Chairman, with the inclusion of the safeguard clause proposed by Yemen, would read as follows:

"Subject to its constitutional and legal limitations, Parties shall facilitate the extradition of persons accused or convicted of offences established in accordance with article 2, paragraph 1 of this article."

16. As regards the second sentence of the proposal of Yemen, it was agreed that its substance fell within the ambit of paragraph 8.

17. The representative of the United States orally proposed a substantive restructuring of the whole article, involving the deletion of paragraphs 6, 7 and 9, a reformulation of paragraph 8 and the use of the word "may" in paragraph 3. He later submitted a written amendment to paragraph 8 (E/CONF.82/C.1/L.30) as indicated below.

18. Following further discussion on the second sentence of the paragraph as proposed by the Chairman, the Committee decided against the inclusion of that sentence and consequently reversed its earlier acceptance of the first sentence of the paragraph (see paragraph 16 above). The paragraph as a whole was therefore deleted.

Paragraph 7

19. Paragraph 7 of the basic proposal was amended so as to make it acceptable to those representatives who

would have preferred its deletion. The agreed reworded text reads as follows:

“With respect to offences established in accordance with article 2, paragraph 1, the Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements thereto.”

20. The Drafting Committee was requested to examine the appropriateness of retaining the words “With respect to offences established in accordance with article 2, paragraph 1,” in view of the fact that the same reference to offences already appeared at the beginning of paragraph 1 covering the whole article.

Proposed additional paragraph 7 bis

21. The representative of China introduced a proposed text for an additional paragraph 7 *bis* (E/CONF.82/C.1/L.28).

22. Following general discussion and informal consultations, the Committee agreed on a reformulated text reading as follows:

“Subject to the provisions of its domestic law and its extradition treaties, the requested Party may upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.”

Paragraph 8

23. The Committee considered the reformulation of paragraph 8 proposed by the United States (E/CONF.82/C.1/L.30), bearing in mind its substantive connection with the provisions of article 2 *bis*, paragraph 2.

24. In the light of suggestions made in the course of the discussion, the Chairman proposed a redraft of the paragraph reading as follows:

“Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall, if it does not extradite him in respect of an offence established in accordance with article 2, paragraph 1, on the grounds set forth in article 2 *bis*, paragraph 2[(a)], submit the case [without undue delay] to its competent authorities for the purpose of prosecution, if so requested by the requesting Party.”

25. The Committee decided to delete the words “without undue delay”. As regards the words “if so requested by the requesting Party”, which were objected to by a number of delegations, the Committee, at the suggestion of the Chairman, agreed to delete them and to replace them with a wording initially proposed by the representative of the Netherlands reading as follows: “unless otherwise agreed with the requesting Party”.

26. It was the understanding of the Committee that the use of the words “unless otherwise agreed with the

requesting Party” in no way implied the requirement of any prior agreement between the Parties concerned as regards the prosecution of the alleged offender in the requested Party.

27. The Committee, after having agreed on the formulation of article 2 *bis*, paragraph 2, considered the clause “on the grounds set forth in article 2 *bis*, paragraph 2[(a)]” referring to the grounds for refusal of extradition specified in that paragraph.

28. Several representatives supported the proposal of the representative of Sweden to insert the word “solely” at the beginning of the clause. Some other representatives proposed deletion of the clause, the adoption of which would, in their view, result in too restrictive a qualification of the principle *aut dedere aut judicare*. Seeking to conciliate the two divergent positions, the Chairman proposed the replacement of the clause with the following words: “and has established its jurisdiction in relation to that offence in accordance with article 2 *bis*, paragraph 2”.

29. In view of the difficulty of reaching consensus on the formulation proposed by the Chairman, the representative of the Netherlands suggested a different approach to conciliate the divergent positions and proposed rewording the paragraph as follows:

“Without prejudice to the exercise by a Party of any criminal jurisdiction established by it pursuant to article 2 *bis*, subparagraph 2(b), or otherwise in accordance with its domestic law, a Party in whose territory an alleged offender is found shall, in any event, if it does not extradite him in respect of an offence established in accordance with article 2, paragraph 1, on the grounds set forth in article 2 *bis*, paragraph 2(a), submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party for the purpose of preserving the latter Party’s right to exercise jurisdiction in that case itself.”

30. The representative of Algeria orally proposed a redraft of paragraph 8 reading as follows:

“Without prejudice to the exercise of any criminal jurisdiction provided for under its domestic law, a Party in whose territory the person alleged to have committed an offence as defined in article 2, paragraph 1 is present shall, failing extradition, take the necessary steps to refer the matter to its competent authorities with a view to the institution of criminal proceedings.”

31. Following general discussion of the various proposals and informal consultations among interested delegations, the representative of the Netherlands introduced a compromise text reading as follows:

“Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall,

“(a) If it does not extradite him in respect of an offence established in accordance with article 2, paragraph 1, on the grounds set forth in article 2 *bis*,

paragraph 2(a), submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party;

“(b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 2 *bis*, paragraph 2, submit the case for the purpose of prosecution, unless opposed by the requesting Party for the purposes of preserving its legitimate jurisdiction.”

32. The Committee agreed to the proposal of the representative of Malaysia, supported by several representatives, to replace the words “unless opposed” in subparagraph 8(b) with the words “unless otherwise requested”.

33. The Committee agreed on the text of paragraph 8 as reformulated.

Paragraph 9

34. The Committee agreed to retain the text of paragraph 9 as contained in the basic proposal with the deletion of the phrase “or has his habitual residence in its territory”, the deletion of the second sentence and the insertion of the words “in conformity with the requirements of such law” after the words “permits and”.

Paragraph 10

35. The Committee agreed on the text of paragraph 10 as contained in the basic proposal.

Paragraph 11

36. The Committee agreed on the text of paragraph 11 as contained in the basic proposal amended to read as follows:

“The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer of persons sentenced to deprivation of liberty for offences to which this article applies, to their country, in order that they may complete their sentences there.”

37. It was the understanding of the Committee that the terms “to their country” were to be interpreted to cover the country of origin or country of citizenship and that the “deprivation of liberty” included imprisonment.

Proposed additional paragraph by Jamaica

38. The representative of Jamaica introduced a proposal of his delegation which he had submitted in the context of article 2, paragraph 7 (E/CONF.82/C.1/L.9).

39. Following general discussion the Committee agreed to amend the text proposed to read as follows:

“In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its competent judicial or executive authorities to believe that compliance would facilitate the prosecution of, punishment of, any person on account of his

race, religion, nationality, or political opinions or would cause prejudice for any of those reasons to any person affected by the request.”

40. The Committee decided to insert this paragraph in place of paragraph 6 of the basic proposal which it had decided to delete (see paragraph 18 above).

41. The representative of the United States of America expressed his objection to the inclusion of the text in article 4.

Title of article 4

42. The Committee agreed that article 4 should be entitled “Extradition”.

IV. TEXT SUBMITTED TO THE DRAFTING COMMITTEE

43. The Committee agreed on the following text which is being submitted to the Drafting Committee:

“EXTRADITION

“1. This article shall apply to the offences established by the Parties in accordance with paragraph 1 of article 2 of this Convention.

“2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

“3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. Parties which require detailed legislation in order to use this Convention as a legal basis for extradition, shall consider enacting such legislation as may be necessary.

“4. Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

“5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

“6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its competent judicial or executive authorities to believe that compliance would facilitate the prosecution of, punishment of, any person on account of his race, religion, nationality, or political opinions or

would cause prejudice for any of those reasons to any person affected by the request.

"7. With respect to offences established in accordance with article 2, paragraph 1, the Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements thereto.

"7 *bis*. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

"8. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall,

"(a) If it does not extradite him in respect of an offence established in accordance with article 2, paragraph 1, on the grounds set forth in article 2 *bis*, paragraph 2(a), submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party;

"(b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 2 *bis*, paragraph 2, submit the case for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

"9. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence, or the remainder thereof, which has been imposed under the law of the requesting Party.

"10. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

"11. The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer of persons sentenced to deprivation of liberty for offences to which this article applies, to their country, in order that they may complete their sentences there."

DOCUMENT E/CONF.82/C.1/L.18/ADD.5

[Original: English]
[16 December 1988]

Article 5

I. BASIC PROPOSAL

1. The text of article 5, which was before the Conference in document E/CONF.82/3, reads as follows:

"Article 5

"MUTUAL LEGAL ASSISTANCE

"1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in any investigations, prosecutions and judicial proceedings in relation to a criminal offence established in accordance with article 2, paragraph 1.

"2. [Mutual legal assistance, pursuant to this article, will be provided taking due account of the Constitution, [fundamental legal principles] [legal systems] [administrative systems] of the requested Party].

"3. [Mutual legal assistance provided for in this article refers to] [Requests for mutual legal assistance, pursuant to this article, may be made for any of the following purposes] [Requests for any of the following forms of mutual legal assistance shall be considered pursuant to this article]:

"[(a) Taking evidence or statements from persons;]

"[(b) Effecting service of judicial documents;

"[(c) Executing requests for searches and seizures;

"[(d) Examining objects and sites related to the commission of offences established under article 2, paragraph 1;]

"[(e) Providing information and objects [related to the commission of offences established under article 2, paragraph 1;]

"[(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate and business records;]

"[(g) Identifying or tracing proceeds, property, instrumentalities or other things derived from or used in the offences established in accordance with article 2, paragraph 1, [in order to facilitate investigation or prosecution] [for evidentiary purposes].

"3 *bis*. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

"3 *ter*. Upon request, the Parties shall facilitate or encourage, to the extent consistent with national law and practice, the presence or availability of persons, including persons in custody, who [consent] [are prepared] to assist in investigations or participate in proceedings.

"4. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters. [The Parties, including their competent authorities, may provide for assistance, including those types described in paragraph 3, pursuant to other treaties, agreements, arrangements or practices.]

"5. Paragraphs 8 to 13 of this article shall apply to requests made pursuant to this article if the Parties in

question are not bound by a treaty of mutual legal assistance. [If these Parties are bound by such a treaty, the [procedural] provisions of that treaty shall apply provided that they supplement the principles contained in paragraphs 8 to 13 of this article or facilitate their application [and unless the Parties agree to apply paragraphs 8 to 13 of this article in lieu thereof.]]

"6. Parties shall designate an authority [or authorities] which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority [or the authorities] designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.

"7. Requests shall be made in writing [in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be also notified to the Secretary-General]. [In urgent circumstances, and if acceptable to the requested Party, such requests may be made orally, but shall be confirmed in writing forthwith.]

"8. Requests for mutual legal assistance shall contain:

"(a) The name and function of the authority making the request;

"(b) The subject-matter and nature of the [investigation,] prosecution or proceeding to which the request relates, [including a summary of the relevant facts,] and the name and the functions of the authority conducting such [investigation,] prosecution or proceeding;

"(c) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;

"(d) Where necessary and possible, the identity, location and nationality of the person concerned.

"8 bis. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

"9. A request shall be executed in accordance with the domestic law [, and by the competent authorities,] of the requested Party and, to the extent not contrary to the law of the requested Party and where possible, in accordance with the procedures specified in the request.

"10. [If the requested Party so requires,] the requesting Party shall not disclose or use information or evidence furnished by the requested Party for purposes other than those stated in the request without the prior consent of the requested Party.

"10 bis. The requesting Party may require that the requested Party keep confidential the fact and substance of the request except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

"11. Mutual legal assistance may be refused:

"(a) If the request is not made in conformity with the provisions of this article;

"(b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

"[(c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out a request made with regard to the same offence having been committed within its territory;]

"(d) If it would be contrary to the [Constitution, fundamental legal principles or] to the law of the requested Party relating to mutual legal assistance for the request to be granted;

"[(e) If the execution of the request would require that authorities of the requesting Party undertake functions or actions, in the territorial jurisdiction of the requested Party, which are exclusively reserved to the competent authorities of the requested Party in accordance with its national legislation.]

"12. Mutual legal assistance may be postponed on the ground that it interferes with an ongoing investigation or prosecution. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can be given subject to such terms and conditions as the requested Party deems necessary.

"13. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or regional agreements that would serve the purposes, and give practical effect to the provisions of, this article.

"Additional paragraphs

"[A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party, nor shall advantage be taken of the person for the purpose of civil proceedings. Such safe conduct shall cease when the witness or expert or person having had, for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.]

"The ordinary costs of executing a request shall be borne by the requested Party. If expenses of an

extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed.

"Reasons shall be given for any refusal of mutual assistance."

II. AMENDMENTS

2. Amendments were submitted to article 5 by India (E/CONF.82/C.1/L.13), Israel (E/CONF.82/C.1/L.26), Netherlands (E/CONF.82/C.1/L.32), Canada and United States of America (E/CONF.82/C.1/L.33), China (E/CONF.82/C.1/L.34), Jamaica (E/CONF.82/C.1/L.35), Australia (E/CONF.82/C.1/L.36), Switzerland (E/CONF.82/C.1/L.37) and Netherlands (E/CONF.82/C.1/L.39).

Paragraphs 1 and 2

India (E/CONF.82/C.1/L.13)

Replace paragraphs 1 and 2 with the following text:

"1. Having due regard to their constitutional, legal and administrative systems, the Parties shall afford one another, upon request and in accordance with the provisions of this article, the widest measure of mutual legal assistance in all investigations, prosecutions and other judicial proceedings relating to offences enumerated in paragraph 1 of article 2 of this Convention which fall within the jurisdiction of the requesting Party.

"2. The Parties undertake to adopt legislative and administrative measures as may be necessary within their domestic legal systems to ensure that effective assistance as envisaged in this article may be rendered to other Parties at their request."

Paragraph 3

Netherlands (E/CONF.82/C.1/L.32)

Replace paragraph 3 with the following text:

"3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

"(a) The taking of statements from persons, whether or not under oath or promise;

"(b) Effecting service of judicial documents;

"(c) Search of premises and seizure of items of evidence;

"(d) Examining objects and sites;

"(e) Providing information and objects;

"(f) Providing originals or certified copies of documents and records, including bank, financial, corporate or business records;

"(g) Identifying proceeds, property, instrumentalities or other things for evidentiary purposes."

New paragraph 3 quater

Canada and United States of America (E/CONF.82/C.1/L.33)

Add the following paragraph:

"3 quater. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available. A Party shall not decline to render assistance under this article on the grounds of bank secrecy."

Paragraph 4

Australia (E/CONF.82/C.1/L.36)

Combine paragraphs 4 and 5 in a single paragraph 4 reading as follows:

"4. (a) The Parties, including their competent authorities, may provide for assistance, including those types described in paragraph 3, pursuant to other bilateral or multilateral treaties, agreements, arrangements or practices;

"(b) Paragraphs [3] and [8] to [13] shall not apply to requests where a treaty, bilateral or multilateral, governs or will govern whether in whole or in part, the provision of mutual legal assistance in criminal matters, except to the extent such treaty derogates from any principle or obligation contained in those paragraphs."

Paragraph 5

Netherlands (E/CONF.82/C.1/L.39)

Amend paragraph 5 to read as follows:

"Paragraphs 6-[12] of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6-[12] of this article in lieu thereof."

Paragraph 6

China (E/CONF.82/C.1/L.34)

Amend the last sentence to read as follows:

"Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel; and in urgent circumstances, through ICPO/Interpol channels, if possible."

Netherlands (E/CONF.82/C.1/L.32)

Add the following sentence at the end of the paragraph:

"6. [. . .]

"A Party may, while submitting a declaration or notification pursuant to article 24, designate an authority for each of the territories for the international relations of which it is responsible."

Paragraph 8

Israel (E/CONF.82/C.1/L.26)

Add the following at the end of the paragraph:

"(e) A copy of the court order or judgement relevant to the request;

"(f) The relevant provisions of the penal law which is applicable to the investigation or prosecution;

"(g) A statement of the connection between the assistance requested and the action being investigated or prosecuted."

Jamaica (E/CONF.82/C.1/L.35)

Add the following subparagraph (e):

"(e) The purpose for which the evidence, information or action is sought."

Paragraph 9

Israel (E/CONF.82/C.1/L.26)

Add the following additional sentence:

"The requested State shall give serious consideration to implementing a request for taking evidence in a manner consistent with the law of the requesting State."

Paragraph 10

Switzerland (E/CONF.82/C.1/L.37)

Should the introductory clause in square brackets be retained, add the following words before the words "the requesting Party":

". . ., in general, through a declaration to the Secretary-General or in a concrete case, . . ."

Paragraph 10 bis

Jamaica (E/CONF.82/C.1/L.35)

Insert the following as subparagraph 10 bis (b) and number paragraph 10 bis of the basic proposal as subparagraph 10 bis (a):

"(b) The requested Party may require that the requesting Party keep confidential the information or evidence furnished. The requesting Party shall comply with the conditions of confidentiality unless and to the extent that the requested State waives the conditions upon application by the requesting State on the ground

that, for reasons of overriding public interest, disclosure of the information or evidence is necessary as evidence in criminal proceedings."

Paragraph 11

Netherlands (E/CONF.82/C.1/L.32)

Replace subparagraph 11(c) with the following text:

"(c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation or prosecution under their own jurisdiction;"

Jamaica (E/CONF.82/C.1/L.35)

Add the following additional subparagraphs (f), (g) and (h):

"(f) If, in cases where criminal proceedings have not been instituted, the requested Party is not satisfied on the basis of the information before it that a criminal offence has been or is likely to be committed;

"(g) If there are substantial grounds leading the requested State to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.

"(h) If the criminal matter appears to the requested Party to concern conduct in relation to which the person now accused or suspected of having committed an offence has been acquitted or convicted by a court in the country of the requested Party."

New paragraph 11 bis

Israel (E/CONF.82/C.1/L.26)

Insert the following as a new paragraph 11 bis:

"11 bis. Nothing in this article will permit the authorities of the requesting Party to assume functions or undertake actions in the territorial jurisdiction of the requested Party which are exclusively reserved to the competent authorities of the requested Party in accordance with its national legislation, unless express authorization is given therefor by the requested Party."

Canada and United States of America
(E/CONF.82/C.1/L.33)

Insert the following as a new paragraph 11 bis:

"This Convention is intended solely for mutual legal assistance between the Parties. Without prejudice to rights conferred upon private persons by the domestic law of the States Parties, the provisions of this Convention shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request."

*Additional paragraphs**China (E/CONF.82/C.1/L.34)*

Replace the text of the second additional paragraph with the following text:

"The cost of executing a request shall be borne by the requested Party, but the extra expenses incurred by the requested Party in providing assistance in accordance with the special procedures required by the requesting Party shall be borne by the requesting Party."

Israel (E/CONF.82/C.1/L.26)

Add the following new paragraph:

"The allowances, including subsistence allowances, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place."

III. PROCEEDINGS OF COMMITTEE I

A. Meetings

3* Committee I discussed article 5, and the amendments thereto, at its 28th to 33rd meetings, from 13 to 15 December 1988.

B. Consideration and decisions

Paragraph 1

4. The Committee considered paragraph 1 as contained in the basic proposal and a reformulated text proposed by India (E/CONF.82/C.1/L.13).

5. The Committee did not accept the text proposed by India and decided to retain paragraph 1 as contained in the basic proposal.

6. The Drafting Committee was requested to consider whether the word "any" was necessary.

Paragraph 2

7. The Committee decided to delete paragraph 2 as contained in the basic proposal. It did not accept the alternative text proposed by India.

Paragraph 3

8. The Committee based its consideration of paragraph 3 on the text contained in the basic proposal and a reformulation proposed by the Netherlands (E/CONF.82/C.1/L.32).

Introductory sentence of paragraph 3

9. The Committee agreed on the introductory sentence as contained in the text proposed by the Netherlands (E/CONF.82/C.1/L.32).

Subparagraph 3(a)

10. The Committee agreed on the text of subparagraph 3(a) as contained in the basic proposal.

11. The Drafting Committee was requested to ensure that the terms used in the various languages would cover all forms of evidence and statements.

Subparagraphs 3(b) and 3(c)

12. The Committee agreed on the text of subparagraphs 3(b) and 3(c) as contained in the basic proposal with the deletion of the words "requests for" in subparagraph 3(c).

Subparagraph 3(d)

13. The Committee agreed on the text of subparagraph 3(d) as proposed by the Netherlands (E/CONF.82/C.1/L.32).

14. The attention of the Drafting Committee was drawn to the desirability of inserting the word "visiter" before the words "des lieux" in the French text.

Subparagraph 3(e)

15. The Committee agreed on the text of subparagraph 3(e) as proposed by the Netherlands (E/CONF.82/C.1/L.32) amended to read as follows: "providing information and evidentiary items".

Subparagraph 3(f)

16. The Committee agreed on the text of subparagraph 3(f) as proposed by the Netherlands (E/CONF.82/C.1/L.32) with the insertion of the word "relevant" before the word "documents".

Subparagraph 3(g)

17. The Committee agreed on the text of subparagraph 3(g) as proposed by the Netherlands (E/CONF.82/C.1/L.32) with the insertion of the words "or tracing" before the word "proceeds".

Paragraph 3 bis

18. The Committee agreed on the text of paragraph 3 bis as contained in the basic proposal.

Paragraph 3 ter

19. The Committee agreed on the text of paragraph 3 ter as contained in the basic proposal with the replacement of the word "national" with the word "domestic" and the deletion of the words "are prepared".

Paragraph 3 quater

20. The Committee considered the text of the proposed new paragraph 3 quater submitted by the United States of America (E/CONF.82/C.1/L.33).

*In the draft report the paragraph numbering was incorrect for paragraphs 3-71 and thus differs from the final report.

21. Following informal consultations and general discussion, the Committee agreed to retain the text of the second sentence of the proposal, amended to read as follows: "A Party shall not decline to render mutual legal assistance under this article on the grounds of bank secrecy."

22. The representative of Jamaica reserved his position with regard to certain aspects of the provision.

Paragraph 4

23. The Committee considered the provisions of paragraph 4 on the basis of the text contained in the basic proposal and a combined reformulation of paragraphs 4 and 5 proposed by Australia (E/CONF.82/C.1/L.36).

24. The Committee agreed on the text of paragraph 4 as contained in the basic proposal with the deletion of the second sentence.

25. The Committee decided to introduce new wording in paragraph 13 to cover some considerations contained in the deleted sentence.

Paragraph 5

26. The Committee agreed on the text of paragraph 5 as proposed by the Netherlands (E/CONF.82/C.1/L.39) with reference being made to paragraphs 6 to 12 *ter*.

Paragraph 6

27. The Committee based its consideration of paragraph 6 on the text contained in the basic proposal, an amendment proposed by China (E/CONF.82/C.1/L.34), and an amendment proposed by the Netherlands (E/CONF.82/C.1/L.32).

28. The representative of the Netherlands withdrew his amendment following the decision in Committee II to delete in the final clauses article 24 on territorial application (E/CONF.82/C.2/L.16).

29. The Committee agreed on the text contained in the basic proposal with the addition of the words "when necessary" between the words "authority or" and the word "authorities" in the first sentence and, taking into consideration the amendment proposed by China (E/CONF.82/C.1/L.34), added, at the end of the paragraph, the words "and in urgent circumstances, where the Parties agree, through ICPO/Interpol channels, if possible".

Paragraph 7

30. The Committee agreed on the text of paragraph 7 contained in the basic proposal with the deletion of the word "also" in the second sentence and the replacement of the words "if acceptable to the requested Party, such" in the third sentence by the words "and where agreed by the Parties".

Paragraph 8

31. The Committee based its consideration of paragraph 8 on the text contained in the basic proposal and the

proposed additional subparagraphs submitted by Israel (E/CONF.82/C.1/L.26) and Jamaica (E/CONF.82/C.1/L.35).

32. As regards the text contained in the basic proposal, the Committee agreed to the following.

Introductory sentence of paragraph 8

33. The introductory sentence of paragraph 8 was accepted as contained in the basic proposal.

Subparagraph 8(a)

34. The Committee agreed on the text of subparagraph 8(a) with the replacement of the words "name and function" by the word "identity".

Subparagraph 8(b)

35. The Committee agreed on the text of subparagraph 8(b) with the deletion of the words "including a summary of the relevant facts" and, in replacement, the insertion of a new subparagraph 8(b) *bis* reading as follows: "a summary of the relevant facts, except for requests for the purpose of service of judicial documents".

Subparagraph 8(c)

36. The Committee agreed on the text of subparagraph 8(c) as contained in the basic proposal.

Subparagraph 8(d)

37. The Committee agreed on the text of subparagraph 8(d) as contained in the basic proposal with the deletion of the words "necessary and" and the replacement of the word "the" by the word "any" before the word "person".

Proposed additional subparagraphs 8(e) to (g)

38. The Committee did not accept the text of the additional subparagraphs 8(e) to (g) proposed by Israel (E/CONF.82/C.1/L.26) but agreed on a new subparagraph (e) proposed by Jamaica (E/CONF.82/C.1/L.35).

Paragraph 8 bis

39. The Committee agreed on the text of paragraph 8 *bis* as contained in the basic proposal.

Paragraph 9

40. The Committee based its consideration of paragraph 9 on the text contained in the basic proposal and the addition proposed by Israel (E/CONF.82/C.1/L.26).

41. The Committee did not accept the addition proposed by Israel and agreed on the text contained in the basic proposal with the deletion of the words "and by the competent authorities".

Paragraph 10

42. The Committee based its consideration of paragraph 10 on the text contained in the basic proposal and the amendment proposed by Switzerland (E/CONF.82/C.1/L.37).

43. The discussion focused on the deletion or retention of the introductory clause "If the requested Party so requires" and the use of the word "disclose".

44. The representative of Switzerland indicated that he would not press for his amendment if the introductory clause was deleted.

45. In order to accommodate the views of the representatives who favoured the deletion of the introductory clause and those who argued for its retention, the Chairman proposed a reformulation of the basic proposal reading as follows:

"The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party."

46. The text as reformulated by the Chairman was agreed upon by the Committee.

Paragraph 10 bis

47. The Committee based its consideration of paragraph 10 *bis* on the text contained in the basic proposal and the additional text proposed by Jamaica (E/CONF.82/C.1/L.35).

48. The Committee did not accept the additional text proposed by Jamaica as it considered that the issue of confidentiality was adequately covered under paragraph 10.

49. The Committee agreed on the text of paragraph 10 *bis* as contained in the basic proposal.

Paragraph 11

50. The Committee based its consideration of paragraph 11 on the text contained in the basic proposal, the amendment submitted by the Netherlands (E/CONF.82/C.1/L.32) and the additional subparagraphs proposed by Jamaica (E/CONF.82/C.1/L.35).

Introductory sentence and subparagraphs 11(a) and 11(b)

51. The Committee agreed on the text of the introductory sentence and subparagraphs 11(a) and 11(b) as contained in the basic proposal.

Subparagraph 11(c)

52. The Committee agreed on the text of subparagraph 11(c) as proposed by the Netherlands (E/CONF.82/C.1/L.32) with the insertion of the words "or proceedings" after the word "prosecution" and the deletion of the word "or" after the word "investigation".

Subparagraph 11(d)

53. The Committee agreed on the text of subparagraph 11(d) as contained in the basic proposal with the replacement of the words "constitution, fundamental legal principles or to the law" by the words "legal system".

Subparagraph 11(e)

54. The Committee decided to delete subparagraph 11(e), as its substance was covered by other provisions of the Convention, in particular article 1 *bis*.

Additional subparagraphs 11(f)-(h)

55. The Committee did not accept the additional subparagraphs 11(f)-(h) proposed by Jamaica (E/CONF.82/C.1/L.35), the substance of which was considered sufficiently covered by other provisions of article 5.

New paragraph 11 bis

56. The Committee did not accept the new paragraph 11 *bis* proposed by Israel (E/CONF.82/C.1/L.26) as it covered the same ground as subparagraph 11(e) which was deleted.

57. The representative of the United States of America withdrew his proposed additional paragraph 11 *bis* (E/CONF.82/C.1/L.33).

Paragraph 12

58. The Committee agreed on the text of paragraph 12 as contained in the basic proposal with the insertion of the words "or proceedings" after the word "prosecution" and the deletion of the word "or" after the word "investigation".

Paragraph 13

59. In connection with its decision to delete the second sentence of paragraph 4, the Committee agreed to amend the text of paragraph 13 as contained in the basic proposal by replacing the words "regional" by the word "multilateral", inserting the words "or arrangements" after the word "agreements", and inserting the words "or enhance" before the words "the provisions".

Additional paragraphs

First additional paragraph

60. The Committee considered the text of the first additional paragraph as contained in the basic proposal. An alternative text was orally proposed by the representative of France.

61. Following general discussion, the Committee agreed on the first sentence with the deletion of the words "nor shall advantage be taken of the person for the purpose of civil proceedings".

62. With regard to the second sentence, the Committee agreed on the text contained in the basic proposal with the insertion between the words "days" and "from the date" of the words "or for any period agreed on by the Parties" and the replacement of the word "when" by the words "on which he has been officially told that".

63. The Drafting Committee was requested to find an appropriate term or formulation for the words "safe

conduct" so as to convey the meaning of immunity in the various languages.

64. The Committee decided to insert the first additional paragraph as paragraph 12 *bis*.

Second additional paragraph

65. The Committee had before it the text of the second additional paragraph as contained in the basic proposal and the draft proposed by China (E/CONF.82/C.1/L.34). Alternative texts were orally proposed by the representatives of Morocco and the United States of America.

66. Following general discussion and various oral amendments to the basic proposal, the representative of China withdrew his amendment and the Committee agreed on the second additional paragraph to read as follows:

"The ordinary costs of executing a request shall be borne by the requested Party unless otherwise agreed by the Parties. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner by which the costs shall be borne."

67. Bearing in mind the text agreed upon by the Committee, the representative of Israel withdrew her proposal for a new additional paragraph (E/CONF.82/C.1/L.26).

68. The Committee decided to insert the second additional paragraph as paragraph 12 *ter*.

Third additional paragraph

69. The Committee agreed on the text of the third additional paragraph as contained in the basic proposal.

70. The Committee decided to insert the third additional paragraph as paragraph 11 *bis*.

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

71. The Committee agreed on the following text which is being transmitted to the Drafting Committee for its consideration.

"MUTUAL LEGAL ASSISTANCE

"1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in any investigations, prosecutions and judicial proceedings in relation to a criminal offence established in accordance with article 2, paragraph 1.

"2. (Deleted)

"3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

"(a) Taking evidence or statements from persons;

"(b) Effecting service of judicial documents;

"(c) Executing searches and seizures;

"(d) Examining objects and sites;

"(e) Providing information and evidentiary items;

"(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;

"(g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

"3 *bis*. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

"3 *ter*. Upon request, the Parties shall facilitate or encourage, to the extent consistent with domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

"3 *quater*. A Party shall not decline to render mutual legal assistance under this article on the grounds of bank secrecy.

"4. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

"5. Paragraphs 6 to 12 *ter* of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6 to 12 *ter* of this article in lieu thereof.

"6. Parties shall designate an authority or, when necessary, authorities which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through ICPO/Interpol channels, if possible.

"7. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

"8. Requests for mutual legal assistance shall contain:

"(a) The identity of the authority making the request;

"(b) The subject-matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

"(b) *bis* A summary of the relevant facts, except for requests for the purpose of service of judicial documents;

"(c) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;

"(d) Where possible, the identity, location and nationality of any person concerned; and

"(e) The purpose for which the evidence, information or action is sought.

"8 *bis*. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

"9. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the law of the requested Party and where possible, in accordance with the procedures specified in the request.

"10. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

"10 *bis*. The requesting Party may require that the requested Party keep confidential the fact and substance of the request except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

"11. Mutual legal assistance may be refused:

"(a) If the request is not made in conformity with the provisions of this article;

"(b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

"(c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

"(d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

"11 *bis*. Reasons shall be given for any refusal of mutual assistance.

"12. Mutual legal assistance may be postponed on the ground that it interferes with an ongoing investigation, prosecution or proceedings. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can be given subject to such terms and conditions as the requested Party deems necessary.

"12 *bis*. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness or expert or person having had, for a period of fifteen consecutive days, or for any period agreed on by the Parties, from the date on which he has been officially told that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

"12 *ter*. The ordinary costs of executing a request shall be borne by the requested Party unless otherwise agreed by the Parties. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner by which the costs shall be borne.

"13. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes and give practical effect to, or enhance the provisions of this article."

DOCUMENT E/CONF.82/C.1/L.18/ADD.7

[Original: English]
[15 December 1988]

Article 5 *bis*

I. BASIC PROPOSAL

1. The text of article 5 *bis* which was before the Conference in document E/CONF.82/3 read as follows:

"[Article 5 *bis*

"The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences enumerated in article 2, paragraph 1, of this Convention in cases where such transfer is to be considered in the interest of a proper administration of justice.]"

II. PROCEEDINGS OF COMMITTEE I

A. Meetings

2. Committee I discussed article 5 *bis* at its 32nd meeting, on 15 December 1988.

B. Consideration and decisions

3. The Committee decided to replace the word "enumerated" by the words "set forth" and agreed upon the text thus amended.

4. The Drafting Committee was requested to consider whether the expression "of this Convention", which may not be consistently used in the respective articles where reference is made to other articles, could be dispensed with.

5. The Committee also agreed that the title of the article would read: "Transfer of proceedings".

III. TEXT SUBMITTED TO THE DRAFTING COMMITTEE

6. The Committee agreed on the following text, which is being submitted to the Drafting Committee:

"TRANSFER OF PROCEEDINGS"

"The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences set forth in article 2, paragraph 1, of this Convention in cases where such transfer is to be considered in the interest of a proper administration of justice."

DOCUMENT E/CONF.82/12*

Report of Committee of the Whole II

[Original: English]
[18 December 1988]

DOCUMENT E/CONF.82/C.2/L.13

[Original: English/Spanish]
[16 December 1988]

1. Committee of the Whole II (Committee II) held 34 meetings from 28 November through 16 December 1988. At its 21st meeting, the Committee decided to establish a Working Group to consider the Final Clauses of the Draft Convention (articles 20 to 28). The Chairman of the Working Group reported to the Committee on 15 December 1988.

2. At its first plenary meeting on 25 November 1988, the Conference elected I. Bayer (Hungary) as Chairman of Committee II. At its 2nd meeting on 28 November 1988, Committee II elected L. H. J. B. van Gorkom (Netherlands) as Vice-Chairman and Y. Fernández Ochoa (Costa Rica) as Rapporteur. The Vice-Chairman later acted as moderator of the Working Group referred to in paragraph 1.

3. Committee II had originally been entrusted by the Conference with the consideration of the Preamble and articles 6 *bis*, 7, 8, 9, 10, 11, 11 *bis*, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28. It was later decided to entrust consideration of article 6 to Committee of the Whole II (Committee II). The Preamble, which had originally been transmitted to Committee II for consideration, was later considered by Committee I.

4. The Rapporteur forwarded the draft report to the Drafting Committee in E/CONF.82/C.2/L.13/Add.1-13. The Drafting Committee was instructed by the General Committee to report directly to the Conference.

DOCUMENT E/CONF.82/C.2/L.13/ADD.8*

[Original: English/Spanish]
[13 December 1988]

I. BASIC PROPOSAL

1. The text of article 6 which was before the Conference in document E/CONF.82/3 reads as follows:

"Article 6"

"OTHER FORMS OF COOPERATION AND TRAINING"

"1. The Parties shall cooperate closely with each other, consistent with their respective national legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the illicit traffic. They shall, in particular:

"(a) Establish and maintain channels of communication between competent national agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of illicit traffic, including, if the Parties concerned deem it appropriate, links with other criminal activities.

*Incorporating documents E/CONF.82/C.2/L.13 and Add.1-13.

*Incorporating document E/CONF.82/C.2/L.13/Add.8/Corr.1, dated 15 December 1988.

"(b) Cooperate with one another in conducting enquiries with respect to the illicit traffic at the international level, the identification, whereabouts and activities of traffickers, and the movement of property that may be derived from or used in the illicit traffic.

"(c) In appropriate cases and if not contrary to national law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party on whose territory the operation is to take place. In all such cases the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected.

"(d) Transfer, when appropriate, samples of controlled substances for analytical or investigative purposes.

"2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement, customs and other personnel charged with the suppression of the illicit traffic. Such programmes shall deal, in particular, with the following:

"(a) Methods used in the detection and suppression of the illicit traffic;

"(b) Routes and techniques used by traffickers, particularly in transit States, and appropriate counter-measures;

"(c) Monitoring of the import and export of controlled substances;

"(d) Detection and monitoring of the flow of property derived from or used in the illicit traffic;

"(e) Methods used for concealment of such property;

"(f) Collection of evidence;

"(g) Control techniques in free trade zones and free ports;

"(h) Modern law enforcement techniques.

"3. The Parties shall assist each other to plan and implement training programmes designed to share expertise in the areas referred to in paragraph 2 and, to this end, shall also, when appropriate, use regional and international conferences and seminars to stimulate co-operation and allow discussion on problems of mutual concern, including the special problems and needs of transit States.

"4. The Parties shall facilitate effective coordination between their competent national agencies and services and, in that context, shall consider, where appropriate, allowing the posting of liaison officers from other Parties within their borders, on the basis of bilateral or other agreements or arrangements, and promoting the exchange of personnel and other experts on the illicit traffic.

"5. The Parties shall endeavour, directly or through competent international organizations, to establish programmes of technical cooperation for the

benefit of Parties, with due regard to the special problems and needs of those which are transit States, to improve channels of communication and to provide technical aid when requested and able to do so."

II. AMENDMENTS

2. The Committee had before it an amendment submitted by Mexico (E/CONF.82/3, annex IV).

3. Further amendments were submitted by Cuba (E/CONF.82/C.2/L.18), Israel (E/CONF.82/C.2/L.23), Netherlands (E/CONF.82/C.2/L.25), Japan (E/CONF.82/C.2/L.26) and Australia, Kenya, Netherlands, Paraguay, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America (E/CONF.82/C.2/L.27 and Corr.1).

4. These amendments were to the following effect:

Japan (E/CONF.82/C.2/L.26):

Wherever the expression "illicit traffic" appears in the text it should be replaced by "*offences established in accordance with article 2, paragraph 1*".

Australia, Kenya, Netherlands, Paraguay, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America (E/CONF.82/C.2/L.27 and Corr.1)

New definition—"Transit traffic": "Transit traffic" means the illicit movement of narcotic drugs, psychotropic substances or substances in Lists A and B through the territory of a Party to which these substances are neither ultimately destined nor from which they originated.

Paragraph 1

Mexico (E/CONF.82/3, annex IV)

Delete subparagraphs (a) to (d) of paragraph 1.

Subparagraph 1(a) bis

Cuba (E/CONF.82/C.2/L.18)

Add new subparagraph 1(a) bis to read:

"(a) bis. Where they are neighbouring States, they shall promote, through mutual coordination, the exchange of information concerning measures that they take in the vicinity of the boundaries of their respective territories for the prevention and repression of illicit drug trafficking, for the purpose of ensuring that traffickers do not enter the national territory of one of the Parties or unload their illicit merchandise there as a means of evading the vigilance of one of the Parties or pursuit by it, and shall similarly prevent any action taken by one of the Parties in this regard from having consequences prejudicial to the other Party;"

*Subparagraph 1(b)**Netherlands (E/CONF.82/C.2/L.25)*

Reformulate subparagraph 1(b) to read:

"(b) Cooperate with one another in conducting enquiries with respect to offences, established in accordance with article 2, paragraph 1, having international dimensions, the identification, whereabouts and activities of suspected persons and the movement of proceeds from, or drugs, substances or instrumentalities used in, the commission of such offences."

*Subparagraph 1(c)**Israel (E/CONF.82/C.2/L.23)*

Reformulate the first sentence of the subparagraph to read:

"(c) In appropriate cases, if not contrary to national law and *subject to the approval of the requested State*, establish joint teams . . . is fully respected"

Cuba (E/CONF.82/C.2/L.18)

Reformulate the last sentence of the subparagraph to read:

"(c) In all such cases the Parties involved shall *guarantee* that the sovereignty of the Party on whose territory the operation is to take place is fully respected;"

*Paragraph 2**Subparagraph 2(a)**Netherlands (E/CONF.82/C.2/L.25)*

Reformulate the subparagraph to read:

"(a) Methods used in the detection and suppression of offences established in accordance with article 2, paragraph 1;"

Subparagraph 2(b)

Australia, Kenya, Netherlands, Paraguay, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America (E/CONF.82/C.2/L.27 and Corr.1)

To replace the words "transit States" with the words "States affected by transit traffic".

*Subparagraph 2(d)**Netherlands (E/CONF.82/C.2/L.25)*

Reformulate the subparagraph to read:

"(d) Detection and monitoring of the flow of proceeds derived from, and drugs, substances and instrumentalities used in, the commission of offences established in accordance with article 2, paragraph 1."

*Subparagraph 2(e)**Netherlands (E/CONF.82/C.2/L.25)*

Reformulate the subparagraph to read:

"(e) Methods used for the concealment or disguise of such proceeds;"

Paragraph 3

Australia, Kenya, Netherlands, Paraguay, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America (E/CONF.82/C.2/L.27 and Corr.1)

To replace the phrase "and the needs of transit States" with the phrase "of States affected by transit traffic".

*Paragraph 4**Mexico (E/CONF.82/3, annex IV)*

Delete paragraph 4.

Cuba (E/CONF.82/C.2/L.18)

Reformulate the paragraph to read:

"4. The Parties *may establish* effective coordination between their competent national agencies and services and, in that context, *adopt bilateral or other agreements or arrangements for countering the illicit traffic in narcotic drugs and psychotropic substances.*"

Paragraph 5

Australia, Kenya, Netherlands, Paraguay, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America (E/CONF.82/C.2/L.27 and Corr.1)

Replace paragraph 5 with the following text:

"The Parties shall endeavour, directly or through competent international organizations, to establish programmes of technical cooperation and assistance and improve channels of communication, with due regard to the special problems and needs of those States affected by transit traffic."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

5. Committee II considered article 6 and the amendments thereto at its 19th-24th meetings, on 9-13 December 1988.

B. Consideration and decisions

Paragraph 1

6. The Committee agreed upon the introductory sentence of paragraph 1, as contained in the basic proposal, with

the addition of the following phrase at the end of it: "on the basis of bilateral or multilateral agreements or arrangements".

7. The representatives of the Federal Republic of Germany, France and the United States of America stated that the word "arrangements" in the phrase added at the end of the introductory sentence should be understood as including informal arrangements.

Subparagraph 1(a)

8. Committee II decided to adopt subparagraph 1(a) as formulated in the basic proposal.

Subparagraph 1(a) bis

9. The Committee considered the proposal submitted by Cuba to add a new subparagraph 1(a) *bis* (E/CONF.82/C.2/L.18). After an exchange of views, the proposed new subparagraph 1(a) *bis* was reformulated by the delegation of Cuba to read as follows:

"1. (a) *bis* When one of the Parties adopts measures for the prevention and suppression of illicit traffic in narcotic drugs, psychotropic substances and the substances in Schedules I and II of this Convention in areas near the boundary of the territory of another Party, with whom no bilateral, multilateral or regional cooperation conventions or agreements for the suppression of illicit traffic in those substances exist, the Party carrying out such measures shall supply information on them to the other Party so that it can prevent any damaging consequences that may ensue for its territory as the result of attempts made by the illicit traffickers to escape arrest or prosecution."

10. After a further exchange of views, the representative of Cuba decided to withdraw the above proposal.

Subparagraph 1(b)

11. The Committee agreed on the text of subparagraph 1(b) as contained in the amendment submitted by the Netherlands (E/CONF.82/C.2/L.25) with the following revisions:

(a) To replace the words "international dimensions" by the words "international nature";

(b) To replace the words "suspected persons" by the phrase "traffickers or persons suspected to be involved in trafficking";

(c) To insert after the word "proceeds" the words "or property derived";

(d) To substitute the words "drugs, substances" with the words "narcotic drugs, psychotropic substances and substances in the Schedules of this Convention";

(e) To insert after the words "used in" the words "or intended for use in".

Subparagraph 1(c)

12. The Committee agreed on the text of subparagraph 1(c) as contained in the basic proposal.

13. The representative of Colombia stated that in his country, in the course of the criminal investigation, the administrative cooperation is determined by the decisions of the judge entrusted with the investigation. He further indicated that since the criminal investigation is carried on by a judge, the establishment of a joint team to cooperate in the case is not appropriate, and that for this reason the delegation of Colombia had reservations to the subparagraphs, as adopted.

Subparagraph 1(d)

14. The Committee decided to adopt the subparagraph 1(d) as contained in the basic proposal, amended as follows:

To replace the word "Transfer" by the word "Provide".

15. The representative of Mexico stated that in spite of the reservation of her delegation regarding subparagraphs 1(a), 1(b), 1(c) and 1(d), the essence of which was a proposal for the elimination of these subparagraphs, her delegation would not object to the consensus within the Committee.

Paragraph 2

16. The introductory sentence of paragraph 2 was adopted as contained in the basic proposal with the following amendment:

To replace the phrase "law enforcement, customs and other personnel" by the phrase "law enforcement and other personnel including customs".

17. The representative of China stressed that in the view of his delegation the reference to law enforcement and customs personnel should be completed by the mention of police authorities.

Subparagraph 2(a)

18. The Committee agreed on subparagraph 2(a) as reformulated in the amendment submitted by the Netherlands (E/CONF.82/C.2/L.25).

Subparagraph 2(b)

19. Subparagraph 2(b) was adopted as contained in the basic proposal.

Subparagraph 2(c)

20. Subparagraph 2(c) was adopted as contained in the basic proposal, with the replacement of the words "controlled substances" by the words "narcotic drugs, psychotropic substances and substances in the Schedules of this Convention".

Subparagraph 2(d)

21. Subparagraph 2(d) was adopted as contained in the amendment submitted by the Netherlands (E/CONF.82/C.2/L.25) with the following amendments:

(a) To insert after the word "proceeds" the words "and property";

(b) To replace the words "drugs, substances" by the words "narcotic drugs, psychotropic substances and substances in the Schedules of this Convention";

(c) To insert after the words "used in" the words "or intended for use in".

Subparagraph 2(e)

22. Subparagraph 2(e) was adopted as formulated in the amendment submitted by the Netherlands (E/CONF.82/C.2/L.25) with the following additions:

(a) To insert before the word "concealment" the word "transfer";

(b) To add at the end of subparagraph 2(e) the words "property and instrumentalities".

Subparagraphs 2(f), (g) and (h)

23. Subparagraphs 2(f), (g) and (h) were adopted as contained in the basic proposal.

Paragraph 3

24. The Committee adopted paragraph 3 as contained in the basic proposal, with the following amendment:

To insert between the words "implement" and "training" the words "research and".

Paragraph 4

25. Following an oral proposal by the representative of Mexico, the representative of Cuba stated that the amendment to paragraph 4, contained in E/CONF.82/C.2/L.18, could be withdrawn.

26. After an exchange of views, the Committee decided to include paragraph 4 in paragraph 1 as a new subparagraph 1(e) reading:

"(e) Facilitate effective coordination between the competent national agencies and services and promote the exchange of personnel and other experts, including, where appropriate, the posting of liaison officers."

27. The representative of the United Kingdom stated that the word "exchange" did not mean that reciprocity was inevitable in the posting of liaison officers. Such posting could be considered and agreed upon by the Parties in bilateral agreements according to their needs.

28. The representative of Mexico stated that, in the interpretation of her delegation, the principle of reciprocity in this connection must be maintained.

29. The representative of Colombia indicated that because of the mention of liaison officers, his delegation had to make a reservation to the paragraph.

30. It was agreed to request the Drafting Committee to find an English word for the "officers" which would convey the meaning of the French term "*fonctionnaires*", and to adjust the other languages accordingly.

Paragraph 5

31. After various exchanges of views the Committee decided to delete paragraph 5 as contained in the basic proposal since article 6 *bis* was far more detailed on the same subject.

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

32. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 6

"OTHER FORMS OF COOPERATION AND TRAINING

"1. The Parties shall cooperate closely with each other, consistent with their respective national legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the illicit traffic. They shall, in particular, on the basis of bilateral or multilateral agreements or arrangements:

"(a) Establish and maintain channels of communication between competent national agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of illicit traffic, including, if the Parties concerned deem it appropriate, links with other criminal activities.

"(b) Cooperate with one another in conducting inquiries with respect to offences, established in accordance with article 2, paragraph 1, having international nature, the identification, whereabouts and activities of traffickers or persons suspected to be involved in trafficking and the movement of proceeds or property derived from, or narcotic drugs, psychotropic substances and substances in the Schedules of this Convention or instrumentalities used in or intended for use in, the commission of such offences.

"(c) In appropriate cases and if not contrary to national law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party on whose territory the operation is to take place. In all such cases the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected.

"(d) Provide, when appropriate, samples of controlled substances for analytical or investigative purposes.

"(e) Facilitate effective coordination between their competent national agencies and services and promote the exchange of personnel and other experts including the posting of liaison officers.

"2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement and other personnel including customs charged with the suppression of the illicit traffic. Such programmes shall deal, in particular, with the following:

"(a) Methods used in the detection and suppression of offences established in accordance with article 2, paragraph 1;

"(b) Routes and techniques used by traffickers, particularly in transit States, and appropriate counter-measures;

"(c) Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in the Schedules of this Convention;

"(d) Detection and monitoring of the flow of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in the Schedules of this Convention, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 2, paragraph 1;

"(e) Methods used for transfer, concealment or disguise of such proceeds, property and instrumentalities;

"(f) Collection of evidence;

"(g) Control techniques in free trade zones and free ports;

"(h) Modern law enforcement techniques.

"3. The Parties shall assist each other to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 and, to this end, shall also, when appropriate, use regional and international conferences and seminars to stimulate cooperation and allow discussion on problems of mutual concern, including the special problems and needs of transit States."

DOCUMENT E/CONF.82/C.2/L.13/ADD.9

[Original: English/Spanish]
[14 December 1988]

Article 6 bis

I. BASIC PROPOSAL

1. The text of article 6 *bis* which was before the Conference in document E/CONF.82/3 read as follows:

"Article 6 bis

"INTERNATIONAL COOPERATION AND ASSISTANCE FOR TRANSIT STATES

"1. Parties shall undertake, directly or through competent international or regional organizations, to assist and support transit States through a programme of technical cooperation and shall share appropriately the cost incurred by transit States, when requested, on drug interdiction activities.

"2. The Parties shall also undertake, directly or through competent international or regional organizations, to provide financial assistance to augment the enforcement resources and infrastructure needed for effective prevention of transit traffic."

II. AMENDMENTS

2. Amendments were submitted by Bahamas, Bangladesh, Bolivia, Egypt, India, Indonesia, Iran (Islamic Republic of), Malaysia, Mauritania, Mexico, Philippines and Yugoslavia (E/CONF.82/C.2/L.28) and Netherlands (E/CONF.82/C.2/L.30).

3. These amendments were to the following effect:

Bahamas, Bangladesh, Bolivia, Egypt, India, Indonesia, Iran (Islamic Republic of), Malaysia, Mauritania, Mexico, Philippines and Yugoslavia
(E/CONF.82/C.2/L.28)

Reformulate article 6 *bis* to read as follows:

"INTERNATIONAL COOPERATION AND ASSISTANCE FOR TRANSIT STATES

"1. The Parties shall undertake, directly or through competent international or regional organizations, to assist and support transit States through a programme of technical cooperation and shall share appropriately the cost incurred by transit States, when requested, on drug interdiction and other related activities.

"2. The Parties shall also undertake, directly or through competent international or regional organizations, to provide financial assistance for augmenting the resources and strengthening the infrastructure needed in transit States for better control and effective prevention of transit traffic.

"3. The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article."

Netherlands (E/CONF.82/C.2/L.30)

Reformulate article 6 *bis* to read as follows:

"TRANSIT TRAFFIC

"Parties shall cooperate to the extent possible, directly or through competent international or regional organizations, to assist and support States particularly affected by transit traffic through programmes of technical cooperation or otherwise, *inter alia*, for the purpose of strengthening their enforcement capacity and the infrastructure needed for effective prevention of transit traffic."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

4. Committee II considered article 6 *bis* and the amendments thereto at its 22nd to 24th meetings, on 12 to 13 December 1988.

B. Consideration and decisions

Definition of "Transit State"

5. In connection with article 6 *bis*, the Committee decided to consider the definition of "Transit State" before beginning the examination of the substantive article.

6. The Committee had before it the definition of "Transit State" as contained in the basic proposal under article 1 and the amendment submitted by Australia, Kenya, Netherlands, Paraguay, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America as included in document E/CONF.82/C.2/L.27 and Corr.1.* In connection to this amendment, the Committee considered the possibility to replace the words "Transit States" with the words "States affected by transit traffic" and to replace, consequently, the definition of "Transit State" by the definition of "Transit traffic".

7. After an exchange of views, the Committee decided to retain the words "Transit State" in article 6 *bis* and to define them as follows:

"'Transit State' means a State through the territory of which illicit narcotic drugs, psychotropic substances and substances in Schedule I and Schedule II are being moved, which is neither the place of origin nor the ultimate destination place."

8. The representatives of the sponsors of the amendment contained in E/CONF.82/C.2/L.27 and Corr.1 considered that their amendment had been incorporated in this definition and, therefore, withdrew it.

Consideration of the substance of article 6 bis

9. The Committee considered article 6 *bis* as contained in the basic proposal as well as the reformulations of the article submitted by Bahamas, Bangladesh, Bolivia, Egypt, India, Indonesia, Iran (Islamic Republic of), Malaysia, Mauritania, Mexico, Philippines and Yugoslavia (E/CONF.82/C.2/L.28) and by the Netherlands (E/CONF.82/C.2/L.30).

10. After an exchange of views and various oral proposals, the Committee decided to take as a basis the reformulation contained in document E/CONF.82/C.2/L.28, which the Committee agreed to amend as follows:

Paragraph 1

(a) To substitute the word "undertake" with "cooperate";

(b) To insert between the words "transit States" and "through", the phrase "and, in particular, developing countries in need of such assistance and support, to the extent possible";

(c) To replace "a programme of technical cooperation" by "programmes of technical cooperation";

(d) To delete the words "and shall share appropriately the cost incurred by transit States, when requested".

Paragraph 2

(a) To replace the words "shall also" by "may";

(b) To replace the phrase "financial assistance for augmenting" by "financial assistance to such transit States for the purpose of augmenting";

(c) To delete the words "the resources";

(d) To delete the words "in transit States";

(e) To replace the phrase "for better control and effective prevention" by "for effective control and prevention";

(f) To replace the words "transit traffic" by "illicit traffic".

Paragraph 3

(a) To replace "shall seek to conclude" by "may conclude";

(b) To replace in the phrase "bilateral and multilateral" the word "and" by "or";

(c) To delete the word "treaties";

(d) To add, at the end of the paragraph, the phrase "and may take into consideration financial arrangements in this regard".

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

11. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 6 bis

"INTERNATIONAL COOPERATION AND ASSISTANCE FOR TRANSIT STATES

"1. Parties shall cooperate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical cooperation on drug interdiction and other related activities.

"2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

"3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article and may take into consideration financial arrangements in this regard."

*Amendment submitted to article 6.

DOCUMENT E/CONF.82/C.2/L.13/ADD.6

[Original: English/Spanish]
[5 December 1988]

I. BASIC PROPOSAL

1. The text of article 7 which was before the Conference in document E/CONF.82/3 read as follows:

*"Article 7**"CONTROLLED DELIVERY*

"1. Consistent with the basic principles of their respective national legal systems, the Parties shall take the necessary measures to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in illicit traffic and to taking legal action against them.

"2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned."

II. AMENDMENTS

2. Amendments were submitted by Cuba, Egypt, Guatemala, India, Kenya, Mauritania and Mexico (E/CONF.82/C.2/L.6), Netherlands and United Kingdom of Great Britain and Northern Ireland (E/CONF.82/C.2/L.7), and France (E/CONF.82/C.2/L.9).

3. These amendments were to the following effect:

Cuba, Egypt, Guatemala, India, Kenya, Mauritania and Mexico (E/CONF.82/C.2/L.6)

Amend paragraph 1 to read as follows:

"1. In conformity with the provisions of article 1 *bis* and consistent with the basic principles of their respective national legal systems, the Parties may take the necessary measures to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying and apprehending persons involved in illicit traffic and to taking legal action against them."

Netherlands and United Kingdom of Great Britain and Northern Ireland (E/CONF.82/C.2/L.7)

Add after paragraph 2 new paragraph 3 as follows:

"3. Consignments whose controlled delivery is agreed to, may be intercepted and allowed to continue with the narcotic drugs or psychotropic substances replaced in whole or in part by innocuous substances."

France (E/CONF.82/C.2/L.9)

Add after paragraph 2 new paragraph 3 as follows:

"3. With a view to the efficient coordination of controlled delivery operations at the national and international levels, the Parties may consider entrusting this task to a national authority which could be the national central office. This authority shall be kept informed of any controlled delivery regardless whether the source of information is the police or Customs and whether the delivery in question is proceeding to, from or via its country."

III. PROCEEDINGS OF COMMITTEE II**A. Meetings**

4. Committee II considered article 7 at its 6th to 10th meetings, on 30 November to 2 December 1988.

B. Consideration and decisions*Paragraph 1*

5. After an exchange of views on the basic proposal, the amendment contained in E/CONF.82/C.2/L.6, which was introduced by Mexico, and various oral proposals, the Committee agreed on the basic proposal amended as follows:

(a) To replace "Consistent with" by "If permitted by";

(b) To insert between the words "measures" and "to allow" the phrase "within their possibilities".

6. The representative of the Union of Soviet Socialist Republics indicated that it was the understanding of his delegation that in the text, as adopted, the words "legal action" would include action such as apprehension or detention of the persons identified.

7. The representative of Mexico stated that her delegation would not insist on the inclusion of a reference to article 1 *bis* in paragraph 1 of article 7. She added that this was done in order to expedite the proceedings and should not be understood as an indication that her delegation would not insist on the proposals submitted to article 1 *bis* which had already obtained the support of many delegations.

8. It was also indicated that it was the understanding of the Committee that its decision to preface the reference to "the basic principles of their respective national legal systems" by the words "If permitted by" did not prejudice decisions in relation to references in other articles to the same concept.

9. Moreover, it was indicated that the understanding of the Committee was that the opening phrase could not be interpreted to mean that controlled delivery operations would require an express provision under national law permitting such operations.

Paragraph 2

10. After an exchange of views, the Committee agreed on paragraph 2 as formulated in the basic proposal.

New paragraph 3

11. After an exchange of views on the proposals for a new paragraph 3, the representative of France withdrew the amendment included in E/CONF.82/C.2/L.9.

12. The Committee agreed on the formulation of the new paragraph 3 included in E/CONF.82/C.2/L.7, with the following amendments:

(a) To insert the word "illicit" before the word "consignments";

(b) To insert the phrase "with the consent of the Parties concerned" between the words "may" and "be";

(c) To substitute the phrase "replaced in whole or in part by innocuous substances" with the phrase "intact or removed or replaced in whole or in part".

13. In connection with the adoption of the article, the representative of Mexico stated that the formulation agreed upon was the result of a compromise to achieve consensus but it did not satisfy fully all delegations. She noted further that the Mexican delegation would have preferred the exclusion of any reference to "controlled delivery" since this is explicitly prohibited by Mexican laws and by the laws of many other countries. The agreement of the delegation of Mexico to the article was within the spirit of cooperation in the work of the Conference and her Government's strong commitment to the fight against illicit traffic of narcotic drugs.

Definition of "controlled delivery"

14. In connection with article 7, the definition of "controlled delivery" to appear in article 1 was considered by the Committee. The basic proposal, as included in E/CONF.82/3, for this definition reads as follows:

"'Controlled delivery' means the investigative technique of allowing illicit consignments of narcotic drugs and psychotropic substances [or substances in List A and List B] [or consignments which are intercepted by competent authorities and allowed to continue with the narcotic drugs or psychotropic substances replaced by innocuous substances], to pass out, through or into the territory of one or more countries, with the knowledge and under surveillance of their competent authorities, with a view to identifying persons involved in illicit traffic and to taking legal action against them, [if permitted by the national laws and regulations of a State Party]."

15. After an exchange of views, the Committee adopted the following definition:

"'Controlled delivery' means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in List A or B, or substances substituted for them, to pass out, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in illicit trafficking."

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

16. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

*"Article 7**"CONTROLLED DELIVERY*

"1. If permitted by the basic principles of their respective national legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in illicit traffic and to taking legal action against them.

"2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

"3. Illicit consignments whose controlled delivery is agreed to, may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part."

*DOCUMENT E/CONF.82/C.2/L.13/ADD.7**

[Original: English/Spanish]
[8 December 1988]

Article 8

I. BASIC PROPOSAL

1. The text of article 8 which was before the Conference in document E/CONF.82/3 read as follows:

*"Article 8**"MEASURES TO MONITOR SUBSTANCES FREQUENTLY USED
IN THE ILLICIT PROCESSING OR MANUFACTURE
OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES*

"1. Parties shall take the measures they deem appropriate to prevent diversion of substances in List A and in List B, used for the purpose of illicit processing or manufacture of narcotic drugs or psychotropic substances, and shall cooperate with each other to this end.

"2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in List A or in List B, it shall notify the Secretary-General and furnish him with the information in support of that notification.

*Incorporating document E/CONF.82/C.2/L.13/Add.7/Corr.1.

"3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, and all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

"4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit use and for the illicit processing or manufacture of narcotic drugs or psychotropic substances, finds:

"(a) That the substance is frequently used in the illicit processing or manufacture of a narcotic drug or psychotropic substance, and

"(b) That the volume and extent of the illicit processing or manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

the Board shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either List A or List B on both licit use and illicit processing or manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

"5. The Commission, taking into account the comments submitted by Parties and the comments and recommendation of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a vote of two-thirds majority of its members to place a substance in List A or in List B.

"6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication.

"7. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days after the date of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based.

"(b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit comments within 90 days. All comments received shall be submitted to the Council for consideration.

"(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission and to the Board.

"8. The procedure described in paragraphs 2-7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from List A or from List B, or the transfer of a substance from one list to the other.

"9. Each Party shall, with respect to substances in List A and List B, take the following measures:

"(a) Establish and maintain a system to monitor international trade in substances in List A and List B in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close cooperation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent national authorities of suspicious orders and transactions;

"(b) Provide for the seizure of any substance in List A or in List B if there is sufficient evidence that it is for use in the illicit processing or manufacture of a narcotic drug or psychotropic substance;

"(c) Notify, as soon as possible, the competent national authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in List A or in List B is destined for the illicit processing or manufacture of narcotic drugs or psychotropic substances, including in particular information on the means of payment and on any other essential elements which led to that belief.

"(d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, bills of lading, customs documents and other shipping documents shall include the names as stated in List A or in List B of the substances being imported or exported, the quantity being imported or exported, and the name and address of the importer, the exporter and [, when available,] the consignee.

"(e) Ensure that documents referred to in subparagraph (d) are maintained for a period of not less than two years and may be made available for inspection by the competent national authorities.

"10. (a) In addition to the provisions of paragraph 9, each Party from whose territory a substance in List A is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

"(i) The name and address of the exporter and importer;

"(ii) The designation of the substance in List A;

"(iii) The quantity of the substance exported;

"(iv) The presumed point of entry and estimated date of dispatch.

"(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

"11. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

"(a) The amounts seized of substances in List A and in List B, and, when known, their origin;

"(b) Any substance not included in List A or List B which is identified as having been used in illicit processing or manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

"(c) Methods of diversion and illicit processing or manufacture.

"12. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Lists A and B.

"13. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in List A or List B that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means in sufficient quantity to permit significant illicit processing or manufacture of a narcotic drug or a psychotropic substance.

"Tentative lists

"(Further definition of substances concerning salts etc. to be made)

<i>"List A</i>	<i>List B</i>
Ephedrine	Acetic anhydride
Ergometrine	Acetone
Ergotamine	Anthranilic acid
Lysergic acid	Ethyl ether
Phenyl-2-propanone	Phenylacetic acid
Pseudo-ephedrine	Piperidine"

II. AMENDMENTS

2. Amendments were submitted by India (E/CONF.82/C.2/L.5 and Corr.1), Japan (E/CONF.82/C.2/L.11), Greece* (E/CONF.82/C.2/L.12) and Canada (E/CONF.82/C.2/L.19).

3. These amendments were to the following effect:

Paragraph 1

Japan (E/CONF.82/C.2/L.11)

"Parties shall take the measures they deem appropriate to prevent diversion of substances in List A (*critical precursors*) and in List B (*essential chemicals as*

intermediates, reagents or solvents) used for the purpose of illicit processing or manufacture of narcotic drugs or psychotropic substances, and shall cooperate with each other to this end."

Paragraph 4

Japan (E/CONF.82/C.2/L.11)

"(a) That the substance is *essentially and* frequently used in the illicit processing or manufacture of a narcotic drug or psychotropic substance, and"

Paragraph 6

Japan (E/CONF.82/C.2/L.12)

After the last sentence, add the following sentence:

"However, except for any Party which, within 180 days, in respect of a decision adding a substance to List A or B, has transmitted to the Secretary-General written notice that, in view of exceptional circumstances, it is not in a position to give effect with respect to that substance to all of the provisions of the Convention applicable to substances in that List A or B."

Paragraph 8 bis

India (E/CONF.82/C.2/L.5 and Corr.1)

After paragraph 8 the following paragraph should be inserted:

"8 bis. (a) Without prejudice to the generality of the provisions contained in paragraph (1) of this article, the Parties shall require that the manufacture, trade in and distribution of substances be under licence except where such manufacture, trade or distribution is carried out by a State enterprise.

"(b) The Parties shall:

- "(i) Control all persons and enterprises carrying on or engaged in the manufacture, trade or distribution of the substances;
- "(ii) Control under licence the establishment and premises in which such manufacture, trade or distribution may take place;
- "(iii) Require that licensees under this paragraph obtain permit for conducting the aforesaid operations; and
- "(iv) Prevent the accumulation in the possession of manufacturers, traders, distributors, State enterprises or any authorized persons of quantities in excess of that required for the normal conduct of business, having regard to the prevailing market conditions."

Paragraph 9

India (E/CONF.82/C.2/L.5)

In the first line of paragraph 9, the word "further" should be inserted between the words "following" and "measures".

*On behalf of the States members of the European Economic Community participating in the Conference (Belgium, Denmark, France, Germany, Federal Republic of, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom of Great Britain and Northern Ireland).

Japan (E/CONF.82/C.2/L.11)

"Each Party shall, with respect to substances in Lists A and B, take the following measures *in the way that it deems appropriate to prevent diversion of them*:

"(a) Establish, *as may be necessary*, and maintain a system to monitor . . .

"(b) Provide, *as appropriate*, for the seizure of any substance . . .

or

"(b bis) Provide for the seizure *or the suspension of international trade* of any substance . . .

"(d) Require *to the exporter or consignor*, that exports be properly documented and not mislabelled. Commercial documents such as invoices, *transport documents* and other shipping documents shall include the names and the quantity of the substances, and the name and address of the importer, the exporter and, when available, the consignee.

"(e) Take appropriate measures to ensure that documents referred to in subparagraph (d) . . ."

Add new subparagraph (d) bis after subparagraph (d):

"In no case shall the provisions of subparagraph (c) and (d) be construed so as to impose on a Party the obligation:

"(i) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Party;

"(ii) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Party;

"(iii) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public)."

Mexico (E/CONF.82/3, annex IV)

". . .

"9. Each Party undertakes to propose the necessary measures to its competent legislative bodies with a view to their adoption of provisions enabling them to take the following measures with respect to substances in List A and List B:

". . .

"(b) Provide for the seizure *or securing* of any substance in List A or in List B if there is sufficient evidence that it is for use in the illicit processing or manufacture of a narcotic drug or psychotropic substance;"

*Paragraph 10**Mexico (E/CONF.82/3, annex IV)*

"10. (a) In addition to the provisions of paragraph 9, each Party from whose territory a substance in

List A is to be *legally* exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

". . ."

Japan (E/CONF.82/C.2/L.11)

"(a) In addition to the provisions of paragraph 9, each Party from whose territory a substance in List A is to be exported shall ensure, *if it is suspected that the substances might be used for illicit purposes*, that prior to such export, *or before its arrival at its final destination*, the following information is supplied by its competent authorities to the competent authorities of the importing country:

"(i) The name and address of the exporter and importer, *if known*."

Greece (E/CONF.82/C.2/L.12)*

Paragraph 10 (a) of article 8 should read as follows:

"10. (a) In addition to the provisions of paragraph 9, each Party from whose territory a substance in List A is to be exported shall ensure, *if it is suspected that the substances might be used for illicit purposes*, that prior to such export, *or before its arrival at its final destination*, the following information is supplied by its competent authorities to the competent authorities of the importing country:

"(i) The name and address of the exporter and importer if known."

Canada (E/CONF.82/C.2/L.19)

New formulation of paragraph 10:

"10. (a) In addition to the requirements of paragraph 9, when requested by another Party with regard to any substance in the List (in List A or B), each Party shall provide the following information on each shipment into the territory of that Party:

"(i) The name and address of the exporter, importer and, when available, the consignee;

"(ii) The designation of the substance in the List (in List A or B);

"(iii) The quantity of the substance exported;

"(iv) The presumed point of entry and estimated date of dispatch;

"(v) Any other information which is mutually agreed upon by the Parties."

*On behalf of the States members of the European Economic Community participating in the Conference (Belgium, Denmark, France, Germany, Federal Republic of, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom of Great Britain and Northern Ireland).

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

4. Committee II considered article 8 at its 10th to 16th meetings, on 2 to 7 December 1988.

B. Consideration and decisions

Title

5. The Committee decided to delete the first three words of the title so that it read: "Substances frequently used in the illicit processing or manufacture of narcotic drugs or psychotropic substances".

Paragraphs 1 to 8

6. Committee II agreed to adopt paragraphs 1 to 8 as contained in the basic proposal. The Committee further decided to merge paragraphs 2 and 8 and requested the Drafting Committee to deal with the editorial consequences of this merge.

7. The representative of Japan stated that the nature of the substances in Schedules I and II should have been mentioned in paragraph 1 to clarify the scope of the text. He further noted that his delegation had agreed to paragraph 1 with the understanding that the purpose of the paragraph was to give each Party to the Convention a notion that the Party is permitted to fulfil its obligations under the ensuing paragraphs of article 8 while keeping within the administrative measures of the Party concerned.

Paragraph 8 bis

8. The Committee considered the proposal submitted by India (E/CONF.82/C.2/L.5 and Corr.1) to add after paragraph 8 a new paragraph 8 *bis*. After an exchange of views, the Committee adopted the following formulation of paragraph 8 *bis*:

"8 *bis*. (a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Schedules I and II of this Convention, which are carried out within their territory.

"(b) To this end, the Parties may:

- "(i) Control all persons and enterprises carrying on or engaged in the manufacture and distribution of such substances;
- "(ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;
- "(iii) Require that licensees obtain a permit for conducting the aforesaid operations; and

- "(iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions."

9. The representative of the Federal Republic of Germany stated that his understanding of paragraph 8 *bis* was that Parties were free not to adopt any control measures on the manufacturing process. He stressed that most manufacturers in his country were big and reliable enterprises, which need no control measures whatsoever. This view was supported by some delegations and confirmed by the Chairman as a possible interpretation of this paragraph.

Paragraph 9

10. The representative of Mexico withdrew her proposal contained in document E/CONF.82/3, annex IV, relating to paragraph 9.

11. After consideration of the basic proposal and the amendments submitted by India (E/CONF.82/C.2/L.5 and Corr.1) and Japan (E/CONF.82/C.2/L.11), the Committee decided to adopt paragraph 9 as contained in the basic proposal with the following amendments:

(a) To replace in subparagraph 9(d) the words "bills of lading" by "transport documents";

(b) To delete the square brackets around the words "when available" in subparagraph 9(d).

12. The representative of Japan stated that since some countries have voluntary monitoring systems and others have law-regulated systems, his delegation would accept the formulation with the understanding that each country would be able to select the method best suited to each situation. With regard to subparagraph (b), the representative of Japan also stated that the scope of the subparagraph could be interpreted by his delegation to include only activities conducted within the territory over which the State Party has jurisdiction.

13. The Committee considered the proposal submitted by Japan (E/CONF.82/C.2/L.11) to add a new subparagraph 9(d) *bis* after subparagraph 9(d). The Committee decided that the new subparagraph which emerged from this consideration should be inserted after paragraph 10 and renumbered 10 *bis* (see report below under paragraph 10 *bis*).

Paragraph 10

14. The representative of Mexico withdrew her proposal concerning article 8, paragraph 10, contained in E/CONF.82/3, annex IV, page 112.

15. After an exchange of views on the basic proposal and the amendments submitted by Japan (E/CONF.82/C.2/L.11) and Greece on behalf of the States members of the European Economic Community participating in the Conference (E/CONF.82/C.2/L.12), a new formulation of paragraph 10 was submitted to the Committee by Canada (E/CONF.82/C.2/L.19).

16. After a further exchange of views and the withdrawal by Japan of its amendment (E/CONF.82/C.2/L.11), the Committee decided to adopt the basic proposal amended as follows:

(a) To insert in subparagraph 10(a) between the words "paragraph 9" and "each Party" the phrase "and upon request to the Secretary-General by the interested Party";

(b) To add at the end of subparagraph 10(a)(i) after the word "importer" the phrase "and, when available, the consignee";

(c) To add a subparagraph 10(a)(v) reading as follows: "Any other information which is mutually agreed upon by the Parties".

17. The representative of Mexico stated that her delegation joined the consensus on paragraph 10 which constituted a compromise formulation of the paragraph. In this connection, however, she stressed her concern on the fact that the approval of such formulation was a step back in the control of chemical precursors, as contained, in articles 31 and 12 of the 1961 Convention and 1972 Protocol, respectively.

Paragraph 10 bis

18. Along the lines of the new paragraph 9(d) *bis* (iii), proposed by Japan (E/CONF.82/C.2/L.11), the Committee adopted the following subparagraph 10 *bis*:

"Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process."

Paragraphs 11 and 12

19. The Committee decided to adopt paragraphs 11 and 12 as contained in the basic proposal.

Paragraph 13

20. The Committee decided to adopt paragraph 13 as contained in the basic proposal with the following amendment: To delete the end of the paragraph from the words "in sufficient quantity" so that the paragraph ends with the words "by readily applicable means".

Tentative lists

21. The Committee agreed that these lists should be included as an annex to the Convention.

22. The Committee further decided to rename "List A" and "List B", respectively, "Schedule I" and "Schedule II".

23. The representative of Sri Lanka expressed his concern for the content of the schedules. The Committee decided, however, not to discuss the question of the transfers of substances from one schedule to the other due to the highly technical nature of the issue. In this connection, the representatives of Pakistan and Turkey indicated that

acetic anhydride would be better placed in Schedule I than in Schedule II.

24. The Committee decided not to amend the contents of Schedules I and II as included in the basic proposal.

25. The Committee decided that, in line with the formulation contained in the schedules of the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971, the following sentence should be added at the end of Schedule I and Schedule II:

"The salts of the substances listed in this Schedule whenever the existence of such salts is possible."

Definitions

26. The Committee discussed the question of the definition of the following terms contained in article 8: "processing", "manufacturing", "narcotic drugs", "psychotropic substances" and "preparation". The Committee decided that since such terms were used in or under other articles of the Convention, that should be considered under article 1. In this connection the Committee suggested that the definitions contained in the 1961 and 1971 Conventions for "narcotic drugs" and "psychotropic substances" should be retained in the 1988 Convention. Concerning the term "preparation", the Committee noted that this word was defined differently in the Single Convention on Narcotic Drugs, 1961, and in the Convention on Psychotropic Substances, 1971. The Committee stressed that as far as article 8 was concerned, it was not necessary to define "preparations".

As for the words "Schedule I" and "Schedule II" specifically relevant to article 8, the Committee agreed on the following definition: "'Schedule I' and 'Schedule II' mean the correspondingly numbered lists of substances annexed to this Convention, as amended from time to time in accordance with article 8 of this Convention."

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

27. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"SUBSTANCES FREQUENTLY USED IN THE ILLICIT
PROCESSING OR MANUFACTURE OF NARCOTIC DRUGS
OR PSYCHOTROPIC SUBSTANCES

"1. Parties shall take the measures they deem appropriate to prevent diversion of substances in Schedule I and in Schedule II, used for the purpose of illicit processing or manufacture of narcotic drugs or psychotropic substances, and shall cooperate with each other to this end.

"2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Schedule I or in Schedule II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2-7 of this article shall also apply when

a Party or the Board has information justifying the deletion of a substance from Schedule I or from Schedule II, or the transfer of a substance from one list to the other.

"3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, and all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

"4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit use and for the illicit processing or manufacture of narcotic drugs or psychotropic substances, finds:

"(a) That the substance is frequently used in the illicit processing or manufacture of a narcotic drug or psychotropic substance, and

"(b) That the volume and extent of the illicit processing or manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

the Board shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Schedule I or Schedule II on both licit use and illicit processing or manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

"5. The Commission, taking into account the comments submitted by Parties and the comments and recommendation of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a vote of two-thirds majority of its members to place a substance in Schedule I or in Schedule II.

"6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication.

"7. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days after the date of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based.

"(b) The Secretary-General shall transmit copies of the request for review and the relevant information to

the Commission, to the Board and to all the Parties, inviting them to submit comments within 90 days. All comments received shall be submitted to the Council for consideration.

"(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission and to the Board.

"8 bis. (a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961 and the 1971 Convention on Psychotropic Substances, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Schedules I and II of this Convention, which are carried out within their territory.

"(b) To this end, the Parties may:

"(i) Control all persons and enterprises carrying on or engaged in the manufacture and distribution of such substances;

"(ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;

"(iii) Require that licensees obtain a permit for conducting the aforesaid operations; and

"(iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

"9. Each Party shall, with respect to substances in Schedule I and Schedule II, take the following measures:

"(a) Establish and maintain a system to monitor international trade in substances in Schedule I and Schedule II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close cooperation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent national authorities of suspicious orders and transactions;

"(b) Provide for the seizure of any substance in Schedule I or in Schedule II if there is sufficient evidence that it is for use in the illicit processing or manufacture of a narcotic drug or psychotropic substance;

"(c) Notify, as soon as possible, the competent national authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Schedule I or in Schedule II is destined for the illicit processing or manufacture of narcotic drugs or psychotropic substances, including in particular information on the means of payment and on any other essential elements which led to that belief.

"(d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, transport documents, customs documents and other shipping documents shall include the names as stated in Schedule I or in Schedule II of the substances being imported or exported, the quantity being imported or exported, and the name and address of the importer, the exporter and, when available, the consignee.

"(e) Ensure that documents referred to in subparagraph (d) are maintained for a period of not less than two years and may be made available for inspection by the competent national authorities.

"10. (a) In addition to the provisions of paragraph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Schedule I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

- "(i) The name and address of the exporter and importer and, when available, the consignee;
- "(ii) The designation of the substance in Schedule I;
- "(iii) The quantity of the substance exported;
- "(iv) The presumed point of entry and estimated date of dispatch;
- "(v) Any other information which is mutually agreed upon by the Parties.

"(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

"10 bis. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.

"11. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

"(a) The amounts seized of substances in Schedule I and in Schedule II, and, when known, their origin;

"(b) Any substance not included in Schedule I or Schedule II which is identified as having been used in illicit processing or manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

"(c) Methods of diversion and illicit processing or manufacture.

"12. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Schedules I and II.

"13. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Schedule I or Schedule II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

"ANNEX

(to be printed as annex to Convention)

"Schedule I

Ephedrine
Ergometrine
Ergotamine
Lysergic acid
Phenyl-2-propanone
Pseudo-ephedrine

The salts of the substances listed in this Schedule whenever the existence of such salts is possible.

Schedule II

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Phenylacetic acid
Piperidine

The salts of the substances listed in this Schedule whenever the existence of such salts is possible."

DOCUMENT E/CONF.82/C.2/L.13/ADD.1*

[Original: English/Spanish]
[4 December 1988]

Article 9

I. BASIC PROPOSAL

1. The text of article 9 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 9

"MATERIALS AND EQUIPMENT

"The Parties shall cooperate to suppress trade in materials and equipment for illicit manufacture of narcotic drugs and psychotropic substances."

II. AMENDMENTS

2. Amendments were submitted by India (E/CONF.82/C.2/L.4) and France (E/CONF.82/C.2/L.8). These amendments were to the following effect:

India (E/CONF.82/C.2/L.4)

"MEASURES TO PREVENT DIVERSION OF MATERIALS AND EQUIPMENT FROM BEING USED IN ILICIT MANUFACTURE OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

"1. The Parties shall take necessary measures as they deem appropriate to prevent diversion of materials and equipment which are generally used for illicit production, processing or manufacture of narcotic drugs and psychotropic substances and shall cooperate with each other to this end.

*Incorporating document E/CONF.82/C.2/L.13/Add.1/Corr.1.

"2. If a Party or the Board has information about any such materials and equipment, it shall notify the Secretary-General and furnish him with relevant details thereon. The Secretary-General shall transmit such notification to other Parties for appropriate action in accordance with their domestic law."

France (E/CONF.82/C.2/L.8)

"The Parties shall take the measures that they deem appropriate to prevent diversion to illicit uses of materials and equipment for the production, processing or manufacture of narcotic drugs and psychotropic substances and shall cooperate to this end."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

3. Committee II discussed article 9, and the amendments thereto, at its 4th to 6th meetings held from 29 to 30 November 1988.

B. Consideration and decisions

4. Following consideration of the proposed amendments and various oral proposals, the Committee agreed on the new formulation submitted by France (E/CONF.82/C.2/L.8) with the following modifications:

- (a) To insert between the words "prevent" and "diversion", the words "trade in and";
- (b) To delete the words "to illicit uses" after "diversion"; and
- (c) To insert the word "illicit" before "production".

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

5. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 9

"MATERIALS AND EQUIPMENT

"The Parties shall take the measures that they deem appropriate to prevent trade in and diversion of materials and equipment for the illicit production, processing or manufacture of narcotic drugs and psychotropic substances and shall cooperate to this end."

DOCUMENT E/CONF.82/C.2/L.13/ADD.10

[Original: English/Spanish]
[15 December 1988]

Article 10

I. BASIC PROPOSAL

1. The text of article 10 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 10

"MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILICITLY AND TO ELIMINATE ILICIT DEMAND FOR DRUGS

"1. Each Party shall take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing psychotropic or narcotic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. Such measures shall not be less stringent than the requirements applicable to the cultivation of narcotic plants under the provisions of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961. The measures adopted shall respect fundamental human rights and shall take due account of traditional domestic uses of such plants as well as the protection of the environment.

"2. The Parties may cooperate to increase the effectiveness of eradication efforts. Such cooperation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. Parties may agree on any other appropriate measures of cooperation. They shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication. Parties with common frontiers shall seek to cooperate in eradication programmes in areas along those frontiers.

"3. The Parties shall adopt appropriate measures aimed at eliminating illicit demand for drugs, with a view to eliminating the financial incentives for illicit traffic."

II. AMENDMENTS

2. Amendments were submitted by India (E/CONF.82/C.2/L.2), Bahamas, Bolivia, Colombia, Costa Rica, Cuba, Guatemala, India, Jamaica, Mexico, Panama, Paraguay and Peru (E/CONF.82/C.2/L.29), Colombia (E/CONF.82/C.2/L.31), Argentina, Belgium, Bolivia, Brazil, Canada, Costa Rica, Egypt, Germany, Federal Republic of, Greece, India, Italy, Jamaica, Mexico, Nigeria, Philippines, Senegal, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland and Yugoslavia (E/CONF.82/C.2/L.32) and Canada and Mexico (E/CONF.82/C.2/L.33).

3. These amendments were to the following effect:

Paragraph 1

Bahamas, Bolivia, Colombia, Costa Rica, Cuba, Guatemala, India, Jamaica, Mexico, Panama, Paraguay and Peru (E/CONF.82/C.2/L.29)

Reformulate paragraph 1 to read as follows:

"1. Each Party shall take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing psychotropic or narcotic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional domestic uses—where there is historic evidence of such use—, as well as the protection of the environment."

Paragraph 2

Canada and Mexico (E/CONF.82/C.2/L.33)

Reformulate paragraph 2 to read as follows:

"(a) The Parties may cooperate to increase the effectiveness of eradication efforts. Such cooperation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. Parties may agree on any other appropriate measures of cooperation.

"(b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

"(c) Whenever they have common frontiers, the Parties shall seek to cooperate in eradication programmes in their respective areas along those frontiers."

Paragraph 3

Colombia (E/CONF.82/C.2/L.31)

Amend paragraph 3 to read as follows:

"3. The Parties undertake to adopt, within their respective territories, measures of a repressive, preventive, educational and rehabilitational nature and, in general, any measures necessary to reduce illicit demand for and consumption of narcotic drugs and psychotropic substances (and to eliminate the financial incentives of illicit traffic)."

Argentina, Belgium, Bolivia, Brazil, Canada, Costa Rica, Egypt, Germany, Federal Republic of, Greece, India, Italy, Jamaica, Mexico, Nigeria, Philippines, Senegal, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland and Yugoslavia (E/CONF.82/C.2/L.32)

Reformulate paragraph 3 to read as follows:

"3. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures should be based *inter alia* on the comprehensive multidisciplinary outline adopted by the International Conference on Drug Abuse and Illicit Trafficking of 1987 as it pertains

to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation.

"On the basis of this document Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing demand for narcotic drugs and psychotropic substances."

Paragraph 4

India (E/CONF.82/C.2/L.2)

Insert the following paragraph after paragraph 3:

"4. The Parties may also take necessary measures for early destruction or lawful disposal of the controlled substances which have been seized or confiscated and for the admissibility as evidence of duly certified samples of such substances."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

4. The Committee considered article 10 at its 25th to 28th meetings on 13 to 14 December 1988.

B. Consideration and decisions

Paragraphs 1 and 2

5. The Committee considered paragraph 1 as included in the basic proposal and as reformulated in the amendment submitted by Bahamas, Bolivia, Colombia, Costa Rica, Cuba, Guatemala, India, Jamaica, Mexico, Panama, Paraguay and Peru (E/CONF.82/C.2/L.29).

6. The Committee decided to adopt paragraph 1 according to a proposal introduced by the delegation of Bolivia which reads as follows:

"1. Any measures taken pursuant to this Convention by States Parties shall not be less stringent than the provisions applicable to the eradication of the illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of the illicit demand for narcotic drugs and psychotropic substances under the provisions of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol amending the Single Convention, and the Convention on Psychotropic Substances, 1971."

7. The Committee adopted as paragraph 2 the text contained in document E/CONF.82/C.2/L.29 with the following amendments.

(a) Replace "psychotropic or narcotic substances" by "narcotic or psychotropic substances";

(b) Replace "traditional domestic uses" by "traditional licit uses".

8. As a result of the adoption of these paragraphs, the following paragraphs were renumbered accordingly.

9. The representative of Indonesia had stated that if the word "traditional" were to remain in the paragraph, his delegation would have to state a reservation to it.

Paragraph 3 (former paragraph 2)

10. The Committee decided to adopt paragraph 3 as reformulated in the amendment submitted by Canada and Mexico (E/CONF.82/C.2/L.33).

Paragraph 4 (former paragraph 3)

11. Committee II considered paragraph 4 as contained in the basic proposal and in the amendments submitted by Colombia (E/CONF.82/C.2/L.31) and Argentina, Belgium, Bolivia, Brazil, Canada, Costa Rica, Egypt, Germany, Federal Republic of, Greece, India, Italy, Jamaica, Mexico, Nigeria, Philippines, Senegal, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland and Yugoslavia (E/CONF.82/C.2/L.32).

12. After an exchange of views, the representative of Colombia withdrew the amendment contained in document E/CONF.82/C.2/L.31 and the Committee adopted the reformulation contained in document E/CONF.82/C.2/L.32, with the following amendments:

(a) Replace the phrase "These measures should be based *inter alia* on the comprehensive multidisciplinary outline adopted by the International Conference on Drug Abuse and Illicit Trafficking of 1987" by "These measures may be based *inter alia* on the recommendations of international organizations, the United Nations, United Nations specialized agencies, such as the World Health Organization, other competent international organizations, including the comprehensive multidisciplinary outline adopted by the International Conference on Drug Abuse and Illicit Trafficking of 1987";

(b) Delete at the beginning of the third sentence "On the basis of this document".

13. The representative of France stated the reservation of her delegation as regards the reference to the comprehensive multidisciplinary outline and to recommendations of international organizations in general. She stressed that reference to non-binding texts in the article of a binding international convention was a subject of concern for her delegation.

14. The representative of the Ukrainian Soviet Socialist Republic stated that the comprehensive multidisciplinary outline was a catalogue of recommendations and that reference to such a text was inappropriate in a convention.

15. The representatives of Bulgaria, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics further stated that in adopting paragraph 3 as a compromise text it was their understanding that the reference to the comprehensive multidisciplinary outline was not altering the recommendatory nature of this document and was in no way making it obligatory to the Parties to the Convention. These representatives, as well as the representatives of France and Turkey, stated that such reference to recommendations in an international treaty should not be considered as a precedent.

16. The representative of China stated the concern of his delegation to extend the scope of the paragraph to other documents in addition to the comprehensive multidisciplinary outline.

New paragraph 5 (former new paragraph 4)

17. The amendment submitted by India (E/CONF.82/C.2/L.2) was adopted by the Committee as a new paragraph 5 with the following amendments:

(a) Replace the words "controlled substances" by "narcotic drugs, psychotropic substances and substances in Schedules I and II of this Convention";

(b) Replace the word "samples" by "necessary quantities".

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

18. The Committee agreed on the following text which is being transmitted to the Drafting Committee, and which includes the new renumbering of the paragraphs:

"MEASURES TO ERADICATE NARCOTIC PLANTS CULTIVATED ILLICITLY AND TO ELIMINATE ILLICIT DEMAND FOR DRUGS"

"1. Any measures taken pursuant to this Convention by States Parties shall not be less stringent than the provisions applicable to the eradication of the illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of the illicit demand for narcotic drugs and psychotropic substances under the provisions of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol amending the Single Convention 1961, and the Convention on Psychotropic Substances, 1971.

"2. Each Party shall take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses—where there is historic evidence of such use—, as well as the protection of the environment.

"3. (a) The Parties may cooperate to increase the effectiveness of eradication efforts. Such cooperation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. Parties may agree on any other appropriate measures of cooperation.

"(b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

"(c) Whenever they have common frontiers, the Parties shall seek to cooperate in eradication programmes in their respective areas along those frontiers."

"4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based *inter alia* on the recommendations of international organizations, the United Nations, United Nations specialized agencies, such as the World Health Organization, other competent international organizations, including the comprehensive multidisciplinary outline adopted by the International Conference on Drug Abuse and Illicit Trafficking of 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing demand for narcotic drugs and psychotropic substances.

"5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Schedules I and II of this Convention which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances."

DOCUMENT E/CONF.82/C.2/L.13/ADD.2

[Original: English/Spanish]
[4 December 1988]

Article 11

I. BASIC PROPOSAL

1. The text of article 11 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 11

"COMMERCIAL CARRIERS

"1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the illicit traffic; such measures may include special arrangements with commercial carriers.

"2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for illicit traffic. Such precautions may include:

"(a) If the commercial carrier has its principal place of business within the territory of the Party:

- "(i) Training of personnel to identify suspicious shipments or persons;
- "(ii) Promotion of employee integrity.

"(b) If the carrier is operating within the territory of the Party:

- "(i) Provision of cargo manifests in advance, when possible;
- "(ii) Use of tamper-resistant individually verifiable seals on containers;
- "(iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious incidents that may be related to illicit trafficking.

"3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas cooperate, with a view to preventing unauthorized access to means of transport and cargo, and implementing appropriate security measures."

II. AMENDMENTS

2. An amendment was submitted by Japan (E/CONF.82/C.2/L.3). This amendment was to the following effect:

"1. Paragraph 1: To insert the words 'endeavour to' between the words 'shall' and 'take' in the first line.

"2. Paragraph 2:

- "(i) To insert the words 'having due regard for their constitutional, legal and administrative systems' at the beginning of the paragraph, and
- "(ii) To insert the words 'endeavour to' between the words 'each Party shall' and 'require'."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

3. Committee II considered article 11 and the amendment thereto at its 4th meeting, on 29 November 1988.

B. Consideration and decisions

4. After consideration of the written amendment submitted by Japan and other proposals put forward orally, Committee II agreed on article 11 as formulated in the basic proposal.

5. The representative of the United States of America stated that the report of this Committee should contain the conclusion of the October 1987 expert group to the effect that the Parties could apply in appropriate cases the measures envisaged under subparagraphs 2(a) and 2(b) to all carriers.

Definition of "commercial carrier"

6. In connection with article 11, the definition of "commercial carrier" to appear in article 1 was considered by the Committee. The basic proposal, as included in E/CONF.82/3, for this definition reads as follows:

"'Commercial carrier' means any person or (public or private) entity engaged in transporting persons, goods (or mails) for remuneration, hire (or other forms of reward);"

7. In addition to the basic proposal, the Committee considered the further proposal put forward by Argentina, Australia, Canada, Nigeria, Philippines, Senegal, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela at the Review Group Meeting (E/CONF.82/3/Corr.1). This further proposal reads as follows:

"(b) 'Commercial carrier' means any person or public or private entity engaged in transporting persons or goods for remuneration, hire or any other benefit."

8. After an exchange of views, the Committee adopted the following definition:

"'Commercial carrier' means any person or public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit."

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

9. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 11

"COMMERCIAL CARRIERS

"1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the illicit traffic; such measures may include special arrangements with commercial carriers.

"2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for illicit traffic. Such precautions may include:

"(a) If the commercial carrier has its principal place of business within the territory of the Party:

"(i) Training of personnel to identify suspicious shipments or persons;

"(ii) Promotion of employee integrity.

"(b) If the carrier is operating within the territory of the Party:

"(i) Provision of cargo manifests in advance, when possible;

"(ii) Use of tamper-resistant individually verifiable seals on containers;

"(iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious incidents that may be related to illicit trafficking.

"3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo, and implementing appropriate security measures."

10. The Committee agreed to include in article 1 the following definition of commercial carriers:

"'Commercial carrier' means any person or public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;"

*DOCUMENT E/CONF.82/C.2/L.13/ADD.3**

*[Original: English/Spanish]
[4 December 1988]*

Article 11 bis

I. BASIC PROPOSAL

1. The text of article 11 *bis* which was before the Conference in document E/CONF.82/3 read as follows:

"Article 11 bis

"LABELLING AND COMMERCIAL DOCUMENTS

"1. Each Party shall require that exports of narcotic drugs and psychotropic substances be properly documented. Commercial documents such as invoices, cargo manifests, bills of lading, customs documents and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as designated in their respective schedules, the quantity being exported, and the name and address of the importer, the exporter and, when available, the consignee.

"2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported are not mislabelled."

II. AMENDMENTS

2. An amendment was submitted by Japan (E/CONF.82/C.2/L.3). This amendment was to the following effect:

"1. Paragraph 1: To insert the words 'endeavour to' between the words 'each Party shall' and 'require'.

"2. Paragraph 2: To insert the words 'endeavour to' between the words 'each Party shall' and 'require'."

*Incorporating document E/CONF.82/C.2/L.13/Add.3/Corr.1, dated 16 December 1988.

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

3. Committee II discussed article 11 *bis* and the amendment thereto at its 4th meeting, on 29 November 1988.

B. Consideration and decisions

Title

4. The Committee agreed that the title of article 11 *bis* should read: "COMMERCIAL DOCUMENTS AND LABELLING OF SHIPMENTS".

Paragraph 1

5. It was decided to insert, in the first sentence, the word "legal" between "require that" and "exports".

6. The Committee agreed to insert, at the beginning of the second sentence, before the words "commercial documents", the following phrase: "In addition to the requirements for documentation under article 31 of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol and article 12 of the Convention on Psychotropic Substances, 1971."

7. It was further agreed that an updated terminology should be found for the words "bills of lading" in the second sentence. The words "transport documents" were proposed for the English version; the Committee decided to request the Drafting Committee to find the appropriate terminology in all official languages.

8. The representative of Japan stated that his delegation would accept the formulation with the understanding that each country would be able to select the method best suited to each situation.

Paragraph 2

9. The paragraph was revised by replacing "are not mislabelled" by "be not mislabelled".

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

10. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 11 bis

"COMMERCIAL DOCUMENTS AND LABELLING OF SHIPMENTS

"1. Each Party shall require that legal exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, and article 12 of the Convention on Psychotropic Substances, 1971, commercial documents such as invoices, cargo manifests, transport documents, customs

documents and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as designated in their respective schedules, the quantity being exported, and the name and address of the importer, the exporter and, when available, the consignee.

"2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabelled."

DOCUMENT E/CONF.82/C.2/L.13/ADD.11

[Original: English/Spanish]
[15 December 1988]

Article 12

I. BASIC PROPOSAL

1. The text of article 12 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 12

"ILLCIT TRAFFIC BY SEA

"1. The Parties shall cooperate to the fullest extent possible to suppress the illicit traffic by sea.

"2. If a Party, which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used for the illicit traffic, requests the assistance of other Parties in suppressing its use for that purpose, the Parties so requested shall render such assistance, within the means available to them.

"3. Without prejudice to any rights provided for under general international law, a Party, which has reasonable grounds for believing that a vessel that is beyond the external limits of the territorial sea of any State and is flying the flag of another Party is engaged in illicit traffic, may, if that Party has received prior permission from the flag State, board, search and, if evidence of illicit traffic is discovered, seize such a vessel.

"4. For the purposes of paragraph 3 of this article, a Party shall respond in an expeditious manner to requests from another Party to determine whether a vessel is registered under its laws and to requests for permission made pursuant to the provisions in that paragraph. At the time of adhering to the Convention, each Party shall designate an authority to receive and respond to such requests. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties within one month of the designation.

"5. Where evidence of illicit traffic is found, the Party having custody of the vessel shall take appropriate action with respect to the vessel and persons on board, in accordance with treaties, where applicable, or

any prior agreement or arrangement otherwise reached with the flag State.

"6. A Party which has taken any action contemplated in this article shall promptly inform the flag State concerned of the results of that action.

"7. The Parties shall consider entering into bilateral and regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article."

II. AMENDMENTS

2. The Committee had before it amendments submitted by Mexico (E/CONF.82/3, annex IV) and Peru (E/CONF.82/3, annex IV).

3. Further amendments were submitted by the Federal Republic of Germany (E/CONF.82/C.2/L.10), France (E/CONF.82/C.2/L.14), Argentina (E/CONF.82/C.2/L.15), Brazil, Guatemala, Philippines and Portugal (E/CONF.82/C.2/L.21) and Chile (E/CONF.82/C.2/L.22).

4. These amendments were to the following effect:

Paragraph 1

Mexico (E/CONF.82/3, annex IV)

"1. The Parties shall cooperate to the fullest extent possible to suppress the illicit traffic by sea, *in conformity with the international law of the sea.*"

Argentina (E/CONF.82/C.2/L.15)

In the first line of the Spanish text, replace the word "*colaborarán*" ("shall cooperate") by the word "*cooperarán*". [The English text is not affected.]

Paragraph 2

Mexico (E/CONF.82/3, annex IV)

"2. If a Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used *on the high seas* for the illicit traffic requests the assistance of other Parties in suppressing its use for that purpose, the Parties so requested shall render such assistance, within the means available to them."

France (E/CONF.82/C.2/L.14)

"A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used for the illicit traffic *may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance, within the means available to them.*"

Paragraph 3

Mexico (E/CONF.82/3, annex IV)

Delete paragraph 3.

Peru (E/CONF.82/3, annex IV)

Paragraph 3 should read as follows:

"3. Without prejudice to the rules and principles of international law, a Party which has reasonable grounds for believing that a vessel that is on the high seas is engaged in illicit traffic may, if that Party has received prior permission from the flag State, board, search and, if evidence of illicit traffic is discovered, seize such a vessel."

France (E/CONF.82/C.2/L.14)

Amend the beginning of paragraph 3 to read as follows:

"*Without prejudice to the rules and principles of international law, a Party . . .*"

Argentina (E/CONF.82/C.2/L.15)

Replace the beginning of the paragraph by the following:

"*Without prejudice to the rights of a coastal State in the contiguous zone recognized under general international law a Party . . .*"

Brazil, Guatemala, Philippines and Portugal (E/CONF.82/C.2/L.21)

Paragraph 3 should read as follows:

"*Without prejudice to any rights provided for under general international law, a Party which has reasonable grounds for believing that a vessel that is on the high seas and is flying the flag of another Party is engaged in illicit traffic, may, if that Party has received prior permission from the flag State, board, search and, if evidence of illicit traffic is discovered, seize such a vessel.*"

Chile (E/CONF.82/C.2/L.22)

Amend paragraph 3 as follows:

"3. Without prejudice to any rights provided for under general international law, a Party, which has reasonable grounds for believing that a vessel that is *on the high seas* and is flying the flag of another Party is engaged in illicit traffic, may, if that Party has received prior permission from the flag State, board such a vessel and *inspect its documentation and accessible departments, without altering the navigation or itinerary of the vessel.*

"*If it is considered necessary to inspect the cargo, the vessel shall be inspected in the respective port of destination of the cargo, steps being taken to ensure that the delivery of the cargo to the consignees is not*

delayed. If no psychotropic substances or narcotic drugs are found on board, the costs of the inspection shall be borne by the country that requests the inspection. If the results of the search are positive, the costs of the inspection shall be borne by the owner of the vessel inspected."

Paragraph 3 bis

Federal Republic of Germany (E/CONF.82/C.2/L.10)

Insert in article 12 the following two paragraphs following paragraph 3:

"Where the boarding, search or seizure of a ship on suspicion of illicit traffic has been effected without adequate grounds, the State making the boarding, search or seizure shall be liable to the State the nationality of which is possessed by the ship for any loss or damage caused by these measures.

"A boarding, search or seizure on account of illicit traffic may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect."

France (E/CONF.82/C.2/L.14)

Add a new paragraph 3 *bis* to read:

"The provisions of the preceding paragraph shall not derogate from the rights that a coastal State may exercise, in accordance with international law, in the zone contiguous to its territorial sea."

Brazil, Guatemala, Philippines and Portugal (E/CONF.82/C.2/L.21)

Add a new paragraph 3 *bis* to read:

"If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, the State taking the measures under paragraph 3 shall compensate the State flag for any loss or damage that may have been sustained as a result of such measures."

Paragraph 4

Mexico (E/CONF.82/3, annex IV)

Delete paragraph 4.

Brazil, Guatemala, Philippines and Portugal (E/CONF.82/C.2/L.21)

Add a new paragraph 4:

"All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships beyond the external limit of the territorial sea of any State. Within the exclusive economic zone and with due regard to the rights and duties of the coastal States, as established in international law, such cooperation may include, by mutual agreement between the coastal State and the other party measures provided for in paragraph 3."

Paragraph 5

Mexico (E/CONF.82/3, annex IV)

Delete paragraph 5.

France (E/CONF.82/C.2/L.14)

The paragraph could be worded as follows:

"5. Where evidence of illicit traffic is found, a Party that has intervened against a vessel in pursuance of paragraph 3 shall take appropriate action with respect to the vessel and persons on board, in accordance with treaties or any prior agreement or arrangement reached with the flag State."

Paragraph 6

Mexico (E/CONF.82/3, annex IV)

Delete paragraph 6.

Paragraph 7

Mexico (E/CONF.82/3, annex IV)

Delete paragraph 7.

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

5. Committee II discussed article 12 at its 17th to 29th meetings, on 8 to 15 December 1988.

B. Consideration and decisions

6. After a first consideration of article 12 paragraph by paragraph, as contained in the basic proposal, and of the amendments submitted thereto, the Committee agreed to hold informal consultations on article 12.

7. Following such consultations, a new redraft of article 12 was submitted to the Committee. The new redraft included eleven paragraphs. In the redraft, paragraphs 1, 2, 4, 6 and 7 of the basic proposal was retained with some amendments, whereas paragraphs 3 and 5 of the basic proposal were replaced by new provisions.

8. The new redraft read as follows:

"1. The Parties shall cooperate to the fullest extent possible to suppress the illicit traffic by sea, in conformity with the international law of the sea.

"2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used for the illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

"3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag of another Party is engaged in illicit traffic may so notify the flag State and request authorization from the flag State to take appropriate measures in regard to that vessel.

"4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to:

"(a) Board the vessel;

"(b) Search the vessel; and

"(c) If evidence of illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

"5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo nor to prejudice the commercial and legal interests of the flag State or any other interested State.

"6. The flag State Party may, consistent with its obligations in paragraph 1, subject its authorization to conditions to be mutually agreed between it and the requesting State Party including conditions relating to responsibility.

"7. For the purposes of paragraphs 3 and 4, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is registered under its law and to requests for authorization made pursuant to paragraph 3. At the time of becoming Party to the Convention, each Party shall designate an authority to receive and respond to such requests. The authority designated by each Party for this purpose shall be notified through the Secretary-General to all other Parties within one month of the designation.

"8. A Party which has taken any action contemplated in this article shall promptly inform the flag State concerned of the results of that action.

"9. The Parties shall consider entering into bilateral and regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

"10. Action pursuant to paragraph 4 shall be carried out only by ships or aircraft clearly marked and identifiable as being on government service and authorized to take such action.

"11. Any action taken into accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea."

9. The Committee decided to adopt the new redraft of article 12, with the following amendments:

(a) In paragraph 3, insert after the words "of another Party" the phrase "or displaying marks of registry";

(b) In paragraph 3, insert after the words "the flag State" the phrase "request confirmation of registry and, if confirmed," so that the phrase reads ". . . may so notify the flag State, request confirmation of registry and, if confirmed, request authorization . . .";

(c) In paragraph 4, add the words "*inter alia*" at the end of the introductory sentence, after the words "may authorize the requesting State to";

(d) In the first sentence of paragraph 7, insert after the words "a vessel that is flying its flag" the words "is entitled to fly its flag" and delete the phrase "is registered under its law", so that the sentence reads as follows: "For the purposes of paragraphs 3 and 4, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to fly its flag, and to requests for authorization made pursuant to paragraph 3";

(e) In paragraph 7, insert after the words "designate an authority" the phrase "or, when necessary, authorities";

(f) In paragraph 7, delete the beginning of the third sentence "The authority designated by each Party for this purpose" and replace it by the words "Such designation";

(g) The Committee decided that the wording of paragraph 10 shall follow the wording of article 107 of the Convention on the Law of the Sea and agreed to replace the words "ships or aircraft clearly marked and identifiable as being on government service and authorized to take such action" by "warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect".

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

10. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 12

"ILLICIT TRAFFIC BY SEA

"1. The Parties shall cooperate to the fullest extent possible to suppress the illicit traffic by sea, in conformity with the international law of the sea.

"2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or markings of registry is being used for the illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

"3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag of

another Party or displaying marks of registry is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

"4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to *inter alia*:

"(a) Board the vessel;

"(b) Search the vessel; and

"(c) If evidence of illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

"5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo nor to prejudice the commercial and legal interests of the flag State or any other interested State.

"6. The flag State Party may, consistent with its obligations in paragraph 1, subject its authorization to conditions to be mutually agreed between it and the requesting State Party including conditions relating to responsibility.

"7. For the purposes of paragraphs 3 and 4, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to fly its flag, and to requests for authorization made pursuant to paragraph 3. At the time of becoming Party to the Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

"8. A Party which has taken any action contemplated in this article shall promptly inform the flag State concerned of the results of that action.

"9. The Parties shall consider entering into bilateral and regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

"10. Action pursuant to paragraph 4 shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

"11. Any action taken into accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea."

DOCUMENT E/CONF.82/C.2/L.13/ADD.4

[Original: English/Spanish]
[4 December 1988]

Article 13

I. BASIC PROPOSAL

1. The text of article 13 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 13

"FREE TRADE ZONES AND FREE PORTS

"1. The Parties shall apply measures to suppress the illicit traffic in controlled substances in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

"2. The Parties shall endeavour:

"(a) To monitor the movement and transshipment of goods in free trade zones and free ports, and, to that end, shall empower appropriate authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles;

"(b) To establish a detection system to discover and identify suspicious substances passing in or out of those areas, including, when appropriate, the search of crew members and passengers and their baggage;

"(c) To maintain patrols in harbour and dock areas and at airports and border control points in those areas."

II. AMENDMENTS

2. No amendment was submitted.

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

3. Committee II discussed article 13 at its 1st to 3rd meetings, on 28 and 29 November 1988.

B. Consideration and decisions

4. After a first exchange of views, the Committee formulated a text included in document E/CONF.82/C.2/L.1, to read as follows:

"1. The Parties shall apply measures to suppress the illicit traffic in narcotic drugs, psychotropic substances and substances in Lists A and B in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

"2. The Parties shall endeavour:

"(a) To monitor the movement and transshipment of goods in free trade zones and free ports, and, to that

end, shall empower appropriate authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles;

"(b) To develop a system which will allow the discovery of suspect shipments for the purpose of identifying the narcotic drugs, psychotropic substances and those substances found in Lists A and B passing in or out of those areas, including, when appropriate, the search of crew members and passengers and their baggage;

"(c) To maintain surveillance systems in harbour and dock areas and at airports and border control points in those areas."

5. After a further exchange of views on the basis of this text, a new formulation was considered by the Committee (E/CONF.82/C.2/L.1/Rev.1), to read as follows:

"1. The Parties shall apply measures to suppress the illicit traffic in narcotic drugs, psychotropic substances and substances in Lists A and B in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

"2. The Parties shall endeavour:

"(a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower appropriate authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to perform the search of crew members and passengers and their baggage;

"(b) To establish a system to detect suspect shipments containing narcotic drugs, psychotropic substances and substances in Lists A and B passing in or out of those areas;

"(c) To maintain surveillance systems in harbour and dock areas and at airports and border control points in those areas."

6. This new formulation was agreed upon by the Committee, with the insertion in subparagraph 2(a) of the word "national" between "appropriate" and "authorities".

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

7. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 13

"FREE TRADE ZONES AND FREE PORTS

"1. The Parties shall apply measures to suppress the illicit traffic in narcotic drugs, psychotropic substances and substances in Lists A and B in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

"2. The Parties shall endeavour:

"(a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower appropriate national authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to perform the search of crew members and passengers and their baggage;

"(b) To establish a system to detect suspect shipments containing narcotic drugs, psychotropic substances and substances in Lists A and B passing in or out of those areas;

"(c) To maintain surveillance systems in harbour and dock areas and at airports and border control points in those areas.

DOCUMENT E/CONF.82/C.2/L.13/ADD.5

[Original: English/Spanish]
[4 December 1988]

Article 14

I. BASIC PROPOSAL

1. The text of article 14 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 14

"SUPPRESSION OF THE USE OF THE MAILLS FOR ILLICIT TRAFFIC

"1. In conformity with their obligations under the Conventions of the Universal Postal Union, and consistent with the basic principles of their respective national legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

"2. Measures referred to in paragraph 1 of this article shall include, in particular:

"(a) Coordinated preventive and repressive action to discourage the use of the mails for illicit traffic;

"(b) Introduction and maintenance by authorized law enforcement personnel of investigation techniques designed to detect controlled substances in the mails;

"(c) Legislative measures designed to enable the use of appropriate means to secure evidence required for judicial proceedings."

II. AMENDMENTS

2. The Committee had before it an amendment submitted by Mexico (E/CONF.82/3, annex IV). The amendment was to the following effect:

"1. In conformity with their obligations under the Conventions of the Universal Postal Union, and *in strict conformity* with the basic principles of their respective national legal systems, the Parties shall adopt

measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

"2. Measures referred to in paragraph 1 of this article shall include, in particular:

"..."

"(c) Whatever measures need to be proposed to their competent legislative bodies, designed to enable the use of appropriate means to secure evidence required for judicial proceedings."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

3. Committee II discussed article 14 at its 2nd meeting, on 28 November 1988.

B. Consideration and decisions

Title

4. The Committee decided that the title should read: "The use of the mails".

Paragraph 1

5. It was agreed that the words "consistent with" should be replaced by "in accordance with".

Subparagraph 2(b)

6. The Committee agreed that the phrase "investigative techniques" should read: "investigative and control techniques". It further agreed that the words "illicit consignments of" should be inserted after "to detect" and that, in line with the formulation of article 13, the words "controlled substances" should be replaced by "narcotic drugs, psychotropic substances and substances in Lists A and B", so that the end of the subparagraph would read "to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Lists A and B in the mails."

Subparagraph 2(c)

7. The representative of Mexico withdrew the amendment to subparagraph 2(c).

8. The Committee then agreed on subparagraph 2(c) as formulated in the basic proposal.

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

9. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 14

"THE USE OF THE MAILS

"1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in

accordance with the basic principles of their respective national legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

"2. Measures referred to in paragraph 1 of this article shall include, in particular:

"(a) Coordinated preventive and repressive action to discourage the use of the mails for illicit traffic;

"(b) Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Lists A and B in the mails;

"(c) Legislative measures designed to enable the use of appropriate means to secure evidence required for judicial proceedings."

DOCUMENT E/CONF.82/C.2/L.13/ADD.13

[Original: English/Spanish]
[16 December 1988]

Draft implementation clauses

I. BASIC PROPOSALS

1. The text of articles 15-19 which was before the Conference in document E/CONF.82/3 read as follows:

"Article 15

"FUNCTIONS OF THE COMMISSION

"The Commission may consider all matters pertaining to the aims of this Convention, and in particular:

"(a) Make recommendations for the implementation of the aims and provisions of this Convention;

"(b) Draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith;

"(c) Establish and modify Lists A and B in accordance with article 8; and

"(d) Call the attention of the Board to any matters which may be relevant to the functions of the Board.

"Article 16

"REPORTS TO BE FURNISHED BY THE PARTIES

"1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions.

"2. The Parties shall furnish the information referred to in paragraph 1 in such a manner and by such dates as the Commission may request.

*"Article 17**"COORDINATION AGENCY*

"Having due regard to their constitutional, legal and administrative systems, the Parties shall make arrangements at the national level for the coordination of preventive, investigative and repressive action against the illicit traffic, in particular for ensuring effective co-operation under article 6.

"Article 18

*"MEASURES BY THE [BOARD] [COMMISSION]
TO ENSURE THE EXECUTION OF THE PROVISIONS
OF THE CONVENTION*

"1. (a) If, on the basis of its examination of information submitted by Governments to the Secretary-General or to the Board or of information communicated by United Nations organs, the [Board] [Commission] has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a State to carry out the provisions of this Convention, the [Board] [Commission] shall have the right to ask for explanations from the Government of the State in question.

"(b) After taking action under subparagraph (a), the [Board] [Commission], if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

"(c) If the [Board] [Commission] finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a), or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b), it may call the attention of the Parties, [and] the Council [and the Commission] to the matter.

"2. The [Board] [Commission] shall publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. It shall also publish therein the views of the Government concerned if the latter so requests.

"3. If in any case a decision of the [Board] [Commission] which is published under this article is not unanimous, the views of the minority shall be stated.

"4. Any State shall be invited to be represented at a meeting of the [Board] [Commission] at which a question directly interesting it is considered under this article.

"5. Decisions of the [Board] [Commission] under this article shall be taken by a two-thirds majority of the whole number of the [Board] [Commission].

"Article 19

*"APPLICATION OF STRICTER MEASURES THAN
THOSE REQUIRED BY THIS CONVENTION*

"A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of the illicit traffic."

II. AMENDMENTS

Article 15

2. Amendments were submitted by Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.38 and Rev.1) and Netherlands (E/CONF.82/C.2/L.42).

3. These amendments were to the following effect:

Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.38 and Rev.1)

Reformulate the article to read:

"FUNCTIONS OF THE COMMISSION

"The Commission may consider all matters pertaining to the aims of this Convention, and in particular:

"(a) Make recommendations for the implementation of the aims and provisions of this Convention;

"(b) Draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith;

"(c) Amend Schedule I and Schedule II in accordance with article 8; and

"(d) Call the attention of the Board to any matters which may be relevant to the functions of the Board."

Netherlands (E/CONF.82/C.2/L.42)

Reformulate the article to read:

"REPORTS TO BE FURNISHED BY THE PARTIES

"1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of the Convention in their territories, and in particular:

"(a) The text of laws and regulations promulgated in order to give effect to this Convention;

"(b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by the illicit traffickers.

"2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

"3. The Parties shall furnish annually to the Board:

"(a) The amounts seized of substances in Schedule I and in Schedule II, and, when known, their origin;

"(b) Any substance not included in Schedule I or Schedule II which is identified as having been used in illicit processing or manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

"(c) Methods of diversion and illicit processing or manufacture."

Article 16

4. Amendments were submitted by Japan (E/CONF.82/C.2/L.34), Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.39 and Rev.1) and Netherlands (E/CONF.82/C.2/L.42).

5. These amendments were to the following effect:

Japan (E/CONF.82/C.2/L.34)

The beginning of paragraphs 1 and 2 should read as follows:

"The Parties shall furnish, subject to its domestic laws, to the Secretary-General . . ."

Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.39 and Rev.1)

Reformulate the article to read:

"REPORTS TO BE FURNISHED BY THE PARTIES

"1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions, and in particular:

"(a) An annual report on the working of the Convention within each of their territories;

"(b) The text of all laws and regulations from time to time promulgated in order to give effect to this Convention;

"(c) Such particulars as the Commission shall determine as necessary regarding significant cases and new trends in illicit traffic.

"2. The Parties shall furnish the information referred to in paragraph 1 in such a manner and by such dates as the Commission may request."

Netherlands (E/CONF.82/C.2/L.42)

Reformulate the article to read:

"FUNCTIONS OF THE COMMISSION

"1. The Commission shall, on the basis of reports submitted by the Parties in accordance with article 15, review the operation of the Convention.

"2. The Commission may make suggestions and general recommendations based on the examination of the reports received from the Parties.

"3. The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board.

"4. The Commission shall, on any matter referred to it by the Board under article 17.1(d), take such action as it deems appropriate.

"5. The Commission may, in conformity with the procedures laid down in article 8, modify the schedules, contained in that article. The Commission shall periodically review the adequacy and propriety of those schedules.

"6. The Commission may draw attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith."

Article 17

6. Amendments were submitted by Mexico (E/CONF.82/3, annex IV), Japan (E/CONF.82/C.2/L.34) and Netherlands (E/CONF.82/C.2/L.42).

7. These amendments were to the following effect:

Mexico (E/CONF.82/3, annex IV)

Delete article 17.

Japan (E/CONF.82/C.2/L.34)

The title of article 17 should be changed to "Domestic coordination".

Netherlands (E/CONF.82/C.2/L.42)

Reformulate the article to read:

"FUNCTIONS OF THE BOARD

"1. In addition to the functions set forth in article 8, the Board shall have the following powers:

"(a) If, on the basis of its examination of information submitted to it by Parties, the Board has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a Party to comply with the provisions of articles 8, 9, 10, 11, 11 bis, 12, 13 and 14 of this Convention, the Board shall have the right to ask for explanations from that Party;

"(b) After taking action under subparagraph (a), the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 8, 9, 10, 11, 11 bis, 12, 13 and 14 of this Convention;

"(c) Prior to taking action under subparagraph (d) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

"(d) If the Board finds that the Party concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a), or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b), it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

"2. Any Party shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

"3. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

"4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board."

Article 18

8. Amendments were submitted by Mexico (E/CONF.82/3, annex IV), Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.40 and Rev.1) and Netherlands (E/CONF.82/C.2/L.42).

9. These amendments were to the following effect:

Mexico (E/CONF.82/3, annex IV)

Delete article 18.

Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.40 and Rev.1)

Reformulate the article to read:

"GENERAL SUPERVISION OF THE EXECUTION OF THE PROVISIONS OF THE CONVENTION

"1. (a) If, on the basis of its examination of information submitted by Governments to the Secretary-General or to the Board or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a State to carry out the provisions of this Convention, the Board shall have the right to ask for explanations from the Government of the State in question. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in subparagraph (c), it shall treat as confidential a request for information or an explanation by a Government under this subparagraph.

"(b) After taking action under subparagraph (a), the Board, if satisfied that it is necessary to do so, may call

upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

"(c) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a), or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b), it may call the attention of the Parties, the Council and the Commission to the matter.

"2. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council which shall forward it to all Parties. It shall also publish therein the views of the Government concerned if the latter so requests.

"3. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

"4. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

"5. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

"6. In carrying out its additional responsibilities under this Convention, the Board shall avail itself of the services of appropriate experts."

Netherlands (E/CONF.82/C.2/L.42)

Former article 17 as contained in E/CONF.82/3 now becomes article 18.

Article 18 bis

10. A proposal for a new article 18 *bis* was submitted by Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.41 and Rev.1).

11. This proposal was to the following effect:

Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.41 and Rev.1)

"REPORTS OF THE BOARD

"1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal, and, in appropriate cases, an account of the explanation, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

"2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

12. The Committee considered the implementation clauses as contained in the basic proposal, and the amendments thereto, at its 31st to 34th meetings, on 15 to 16 December 1988.

B. Consideration and decisions

Article 15 (in the basic proposal article 16)

13. Article 15, entitled "Reports to be furnished by the Parties", was adopted as contained in the amendment submitted by the Netherlands (E/CONF.82/C.2/L.42) with the following revision: delete paragraph 3.

Article 16 (in the basic proposal article 15)

14. Article 16 entitled "Functions of the Commission" was adopted as contained in the proposal submitted by the Netherlands (E/CONF.82/C.2/L.42) with the following amendments:

(a) Insert at the beginning of the article before paragraph 1, the following sentence: "The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular: "in accordance with the wording of the introductory sentence of article 8 in the Single Convention on Narcotic Drugs, 1961;

(b) Replace in paragraph 4 the words "article 17.1(d)" by "article 17.1(b)";

(c) In paragraph 5, replace the words "in that article" by "in the annex to this Convention";

(d) Delete the last sentence of paragraph 5.

15. The representative of the United States of America stated that the reference to article 17.1(b) should be understood as including the whole of paragraph 1.

16. The representative of the Union of Soviet Socialist Republics stated that in adopting this article it was the understanding of his delegation that the Commission was authorized, when it was dealing with matters connected with the implementation of the Convention, to declare some of its meetings confidential.

Article 17 (in the basic proposal article 18)

17. The Committee decided to consider former article 18 entitled in the basic proposal "Measures by the (Board) (Commission) to ensure the execution of the provisions of the Convention" on the basis of the reformulation submitted by the Netherlands in document E/CONF.82/C.2/L.42 with the title "Functions of the Board".

18. After a first exchange of views, the Committee decided that informal consultations should be held, following which a new draft was submitted to the Committee, reading as follows:

"Article 17

"FUNCTIONS OF THE BOARD

"1. Without prejudice to the functions of the Commission under article 16, and without prejudice to the functions of the Board and Commission under the Single Convention on Narcotic Drugs, 1961 and the Convention on Psychotropic Substances, 1971:

"(a) If, on the basis of its examination of information available to it, to the Secretary-General, or to the Commission or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to contribute any relevant information;

"(b) With respect to articles 8, 9 and 11 *bis*:

"(i) After taking action under subparagraph (a), the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 8, 9, and 11 *bis*, of this Convention;

"(ii) Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

"(iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

"2. Any Party shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

"3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

"4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

"5. In carrying out its functions pursuant to subparagraph 1(a), the Board shall ensure the confidentiality of all information which may come into its possession.

"6. The Board's responsibility under this article shall not apply to the implementation of treaties or

agreements entered into between States Parties in accordance with the provisions of this Convention.

"7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 26."

19. This new draft of article 17 was adopted by the Committee.

Article 18 bis

20. A new article entitled "Reports of the Board" (numbered 18 *bis*) as contained in the amendment submitted by Canada, Denmark, France, Germany, Federal Republic of, Norway and Sweden (E/CONF.82/C.2/L.41/Rev.1) was adopted.

21. The final drafting of this article was entrusted to the Drafting Committee with the understanding that the wording should be in conformity with the formulation of article 15 of the Single Convention on Narcotic Drugs, 1961 and article 18 of the Convention on Psychotropic Substances, 1971, as well as in conformity with article 17 adopted by Committee II.

Article 19

22. Article 19, entitled "Application of stricter measures than those required by this Convention", was adopted as contained in the basic proposal.

Article 19 bis

23. The Committee decided to adopt a new article 19 *bis* containing a derogation clause which reads as follows:

"The provisions of the present Convention are not intended to derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the Protocol of 1972, or the Convention on Psychotropic Substances, 1971."

24. The Committee also decided that article 17, entitled "Coordination agency", in the basic proposal should be deleted.

25. The representatives of India and the United States of America referred to the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control adopted by the 1987 International Conference on Drug Abuse and Illicit Trafficking as already providing the States with a useful recommendation in this matter.

26. The representatives of France and Morocco stated the reservation of their delegations on the deletion of this article.

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

27. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 15

"REPORTS TO BE FURNISHED BY THE PARTIES

"1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of the Convention in their territories, and in particular:

"(a) The text of laws and regulations promulgated in order to give effect to this Convention;

"(b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by the illicit traffickers.

"2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

"Article 16

"FUNCTIONS OF THE COMMISSION

"The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular:

"1. The Commission shall, on the basis of reports submitted by the Parties in accordance with article 15, review the operation of the Convention.

"2. The Commission may make suggestions and general recommendations based on the examination of the reports received from the Parties.

"3. The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board.

"4. The Commission shall, on any matter referred to it by the Board under article 17.1(b), take such action as it deems appropriate.

"5. The Commission may, in conformity with the procedures laid down in article 8, modify the schedules, contained in the annex to this Convention.

"6. The Commission may draw attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith."

"Article 17

"FUNCTIONS OF THE BOARD

"1. Without prejudice to the functions of the Commission under article 16, and without prejudice to the functions of the Board and Commission under the Single Convention on Narcotic Drugs, 1961 and the Convention on Psychotropic Substances, 1971:

"(a) If, on the basis of its examination of information available to it, to the Secretary-General, or to the

Commission or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to contribute any relevant information;

“(b) With respect to articles 8, 9 and 11 *bis*:

“(i) After taking action under subparagraph (a), the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 8, 9, and 11 *bis*, of this Convention;

“(ii) Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

“(iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

“2. Any Party shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

“3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

“4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

“5. In carrying out its functions pursuant to subparagraph 1(a), the Board shall ensure the confidentiality of all information which may come into its possession.

“6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between States Parties in accordance with the provisions of this Convention.

“7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 26.

“Article 18 *bis*

“REPORTS OF THE BOARD

“1. The Board shall prepare an annual report on its work containing an analysis of the information at its

disposal, and, in appropriate cases, an account of the explanation, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

“2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.”

“Article 19

“APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

“A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of the illicit traffic.

“Article 19 *bis*

“The provisions of the present Convention are not intended to derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the Protocol of 1972 or the Convention on Psychotropic Substances, 1971.”

DOCUMENT E/CONF.82/C.2/L.13/ADD.12

[Original: English/Spanish]
[16 December 1988]

Draft final clauses

I. BASIC PROPOSALS

1. The text of articles 20-28 which was before the Conference in document E/CONF.82/3 read as follows:

“Article 20

“SIGNATURE, RATIFICATION AND ACCESSION

“Variant A:

“1. Members of the United Nations, States not Members of the United Nations which are members of a specialized agency of the United Nations or of the International Atomic Energy or Parties to the Statute of the International Court of Justice, and any other State invited by the Council, and regional economic integration organizations which have competence in respect of the negotiation conclusion and application of international agreements in matters covered by the present Convention, may become Parties to this Convention:

“(a) By signing it; or

"(b) By ratifying it after signing it subject to ratification; or

"(c) By acceding to it.

"References under the present Convention to Parties, States or national services shall be applicable to regional economic organizations within the limits of their competences.

"2. The Convention shall be open for signature until . . . inclusive. Thereafter it shall be open for accession.

"3. Instruments of ratification or accession shall be deposited with the Secretary-General.

"Variant B:

"1. The present Convention is open for signature by all States and regional economic integration organizations which have competence in respect of the negotiation conclusion and application of international agreements in matters covered by the present Convention. References under the present Convention to Parties, States or national services, shall be applicable to these organizations within the limits of their competences.

"2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General.

"3. The present Convention is open to accession by all States and regional economic integration organizations in the sense of paragraph 1 above. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

"Article 21

"ENTRY INTO FORCE

"Variant A:

"1. The Convention shall come into force on the thirtieth/sixtieth/ninetieth day after twenty/thirty/fifty of the States referred to in paragraph 1 of article I have signed it without reservation of ratification or have deposited their instruments of ratification or accession.

"2. For any other State signing without reservation of ratification, or depositing an instrument of ratification or accession after the last signature or deposit referred to in the preceding paragraph, the Convention shall enter into force on the thirtieth/sixtieth/ninetieth day following the date of its signature or deposit of its instrument of ratification or accession.

"Variant B:

"1. This Convention shall enter into force on the thirtieth/sixtieth/ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth/thirtieth/fortieth instrument of ratification or accession.

"2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth/thirtieth/fortieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth/sixtieth/ninetieth day after the date of the deposit of its own instrument of ratification or accession.

"Article 22

"TERRITORIAL APPLICATION

"Variant A:

"The Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

"Variant B:

"1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

"2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General and shall take effect as from the thirtieth/sixtieth/ninetieth day after the day of receipt by the Secretary-General of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

"3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

"Article 23

"DENUNCIATION

"Variant A:

"1. After the expiry of two years from the date of the coming into force of this Convention any Party

may, on its own behalf or on behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article III, denounce this Convention by an instrument in writing deposited with the Secretary-General.

"2. The denunciation, if received by the Secretary-General on or before the first day of July of any year, shall take effect on the first day of January of the succeeding year, and if received after the first day of July it shall take effect as if it had been received on or before the first day of July in the succeeding year.

"3. The Convention shall be terminated if, as a result of denunciations made in accordance with paragraphs 1 and 2, the conditions for its coming into force as laid down in paragraph 1 of article II cease to exist.

"Variant B:

"1. A State Party may denounce this Convention at any time by written notification addressed to the Secretary-General.

"2. Such denunciation shall take effect for the State Party concerned one year after the date of receipt of the notification by the Secretary-General.

"3. A State which has made a notification under article III may, at any time thereafter, by a notification to the Secretary-General, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

"Article 24

"AMENDMENTS

"1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefore shall be communicated to the Secretary-General, who shall communicate them to the Parties and to the Council. The Council may decide either:

"(a) That a conference shall be called in accordance with paragraph 4 of Article 62 of the Charter of the United Nations to consider the proposed amendment; or

"(b) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

"2. If a proposed amendment circulated under paragraph 1(b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

"Article 25

"RESERVATIONS

"1. A State may at the time of signature, ratification or accession make reservations in respect of the following provisions of the present Convention:

"(a) Article . . .

"(b) Article . . .

"2. A reservation incompatible with the object and purpose of this Convention shall not be permitted. A reservation shall be considered incompatible if at least two thirds of the Parties to this Convention object to it.

"3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 1 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have signed without reservation of ratification, ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

"4. A State which has made reservations may at any time by notification in writing to the Secretary-General withdraw all or part of its reservations.

"Variants of paragraphs 1 and 4:

"1. At the time of signature, ratification or accession any State may make reservations to any article of the Convention other than articles . . .

"4. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw all or part of its reservation by a notification to that effect addressed to the Secretary-General.

"Article 26

"DISPUTES

"Variant A:

"1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

"2. Any such dispute which cannot be settled in the manner prescribed shall be referred, at the request of any one of the Parties to the dispute, to the International Court of Justice for decision.

"Variant B:

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other State Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

"3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

*"Article 27**"NOTIFICATIONS*

"The Secretary-General shall notify to all the States referred to in paragraph 1 of article I:

"(a) Signatures, ratifications and accessions in accordance with article I;

"(b) The date upon which this Convention enters into force in accordance with article II;

"(c) Denunciations in accordance with article IV; and

"(d) Declarations and notifications under articles III, IV and VII.

*"Article 28**"AUTHENTIC TEXTS"***II. AMENDMENTS**

2. At its third meeting, on 2 December 1988, the General Committee requested the Secretariat, taking into account the draft final clauses as contained in the basic proposal (E/CONF.82/3), to prepare a text of such clauses reflecting the most recent practice of the Secretary-General of the United Nations as the depositary of multilateral conventions. This text prepared by the Secretariat was before the Working Group as document E/CONF.82/C.2/L.16, reading as follows:

"Draft final clauses prepared by the Secretariat (E/CONF.82/C.2/L.16)

*"Article 20**"SIGNATURE*

"The present Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

"(a) All States;

"(b) Namibia, represented by the United Nations Council for Namibia;

"(c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion, and application of international agreements in matters covered by the Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competences.

*"Article 21**"RATIFICATION, OR ACT OF FORMAL CONFIRMATION*

"The present Convention is subject to ratification by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations. The instruments of ratification and those relating to acts of formal confirmation shall be deposited with the Secretary-General of the United Nations.

*"Article 22**"ACCESSION*

"The present Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 20(c). Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*"Article 23**"ENTRY INTO FORCE*

"1. The present Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth/thirtieth/fortieth instrument of ratification or accession by States or by Namibia, represented by the Council for Namibia.

"2. For each State or for Namibia, represented by the Council for Namibia, ratifying or acceding to the Convention after the deposit of the twentieth/thirtieth/fortieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its instrument of ratification or accession.

"3. For each regional economic intergration organization depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the thirtieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1, whichever is later.

"Article 24

"TERRITORIAL APPLICATION

"1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

"2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the thirtieth day after the day of receipt by the Secretary-General of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

"3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

"Article 25

"DENUNCIATION

"1. After the expiry of two years from the date of the coming into force of this Convention, any Party may denounce the Convention at any time by written notification addressed to the Secretary-General of the United Nations.

"2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

"3. A State which has made a notification under article 24 may, at any time thereafter, by a notification to the Secretary-General, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

"Article 26

"AMENDMENTS

"1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to

the Secretary-General of the United Nations, who shall communicate them to the Economic and Social Council of the United Nations and also to the other Parties for comments to be submitted to the Council. The Council, after reviewing the comments received from the Parties, may, in light of these comments, adopt a revised text of the amendment to be proposed to the Parties. The Council may decide either:

"(a) That a conference shall be called in accordance with paragraph 4 of Article 62 of the Charter of the United Nations to consider the proposed amendment, or

"(b) That the Parties shall be asked whether they accept the proposed amendment.

"2. If a proposed amendment circulated under paragraph 1(b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide whether a conference shall be called to consider such amendment.

"Article 27

"RESERVATIONS

"1. A State, at the time of signature, ratification or accession, or a regional economic integration organization at the time of signature, deposit of an act of formal confirmation or accession, may make reservations in respect of the following provisions of the present Convention:

"(a) Article . . .

"(b) Article . . .

"2. A State or a regional economic integration organization which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 1 may inform the Secretary-General of the United Nations of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the Parties to the Convention before the end of that period, it shall be deemed to be permitted, it being understood however that Parties which have objected to the reservation need not assume towards the reserving Party any legal obligation under the Convention which is affected by the reservation.

"3. A Party which has made reservations may at any time by notification in writing to the Secretary-General withdraw all or part of its reservations.

"Article 28

"DISPUTES

"Variant A:

"1. If there should arise between two or more Parties a dispute relating to the interpretation or application

of the present Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

"2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

"3. If a regional economic integration organization is a party to a dispute which cannot be settled in the manner prescribed in paragraph 1, it may, through a Member State of the United Nations, request the Economic and Social Council of the United Nations to request an advisory opinion of the International Court of Justice in accordance with article 65 of the Statute of the Court which opinion shall be regarded as decisive.

"Variant B:

"1. Any dispute between two or more Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of the States Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. If one or more of the Parties referred to in the previous sentence is a regional economic integration organization, such organization or organizations may, through a Member State of the United Nations request the Economic and Social Council of the United Nations to request an advisory opinion of the International Court of Justice in accordance with article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

"2. Each State, at the time of signature or ratification of this Convention or accession thereto, or each regional economic integration organization at the time of signature or deposit of an act of formal confirmation or accession may declare that it does not consider itself bound by paragraph 1 of this article. The other Parties shall not be bound by paragraph 1 of this article with respect to any Party having made such a reservation.

"3. Any Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

"Article 29

"AUTHENTIC TEXTS

"The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

"Article 30

"DEPOSITARY

"The Secretary-General of the United Nations shall be the depositary of the original of the present Convention.

"IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Convention.

"DONE AT VIENNA, in one original, this twentieth day of December one thousand nine hundred and eighty-eight."

3. In addition to the draft final clauses contained in document E/CONF.82/C.2/L.16, the Committee had before it amendments submitted by the Philippines (E/CONF.82/C.2/L.17), Turkey (E/CONF.82/C.2/L.24) and Japan (E/CONF.82/C.2/L.34).

4. These documents were to the following effect:

Article 20

Philippines (E/CONF.82/C.2/L.17)

Article 20 should read as follows:

"1. Members of the United Nations, States not members of the United Nations which are members of a specialized agency of the United Nations or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and any other State invited by the Council, may become Parties to this Convention:

"(a) By signing it;

"(b) By ratifying it;

"(c) By acceding to it.

"2. The Convention shall be open for signature from . . . until . . . Thereafter it shall be open for accession.

"3. Instruments of ratification or accession shall be deposited with the Secretary-General."

(Note: reference to "regional economic integration organizations" deleted.)

Japan (E/CONF.82/C.2/L.34)

Variant A:

Add a subparagraph 1(d) to read as follows:

"(d) By accepting it."

Article 21

Japan (E/CONF.82/C.2/L.34)

Variants A and B:

Paragraph 1: 90 days should be selected for the entering of force of the Convention after its signature or the deposit of instruments of ratification or accession.

Paragraph 2: The word "State" should be replaced by "Party".

Article 23

Japan (E/CONF.82/C.2/L.34)

Variant B:

Paragraph 3: The word "State" should be replaced by "Party".

Article 24

Japan (E/CONF.82/C.2/L.34)

Add a new paragraph after paragraph 2:

"2 *bis*. Acceptance of an amendment shall be dependent upon each Party's decision."

Article 25

Japan (E/CONF.82/C.2/L.34)

Substitute the following for paragraphs 2 and 3:

"2. Notwithstanding the provisions of paragraph 1, reservations not against the object and purpose of the Convention may be permitted, unless more than two thirds of the Parties propose objections within 180 days after the notification of the Secretariat. However, the Party which proposes the objection need not assume any obligation which derives from such a reservation towards the Party having made the reservation."

Article 28

Turkey (E/CONF.82/C.2/L.24)

1. Amend the heading of the article to read "Settlement of disputes".

2. New wording of paragraphs 2 and 3 of variant B:

"2. Each State, at the time of signature or ratification of this Convention or accession thereto, or each regional economic integration organization at the time of signature or deposit of an act of formal confirmation or accession may declare that it does not consider itself bound by paragraph 1 of this article. The other Parties shall not be bound by paragraph 1 of this article with respect to any Party having made such a declaration.

"3. Any Party having made a declaration in accordance with paragraph 2 of this article may at any time withdraw it by notification to the Secretary-General of the United Nations."

III. PROCEEDINGS OF COMMITTEE II

A. Meetings

5. The Committee considered the final clauses at its 21st, 30th and 31st meetings, on 10 and 15 December 1988.

B. Consideration

6. At its 21st meeting, on 10 December 1988, the Committee decided to establish a Working Group under the chairmanship of its Vice-Chairman, Lodewijk H. J. B. van Gorkom of the Netherlands, to consider the final clauses.

7. At the 30th meeting, the Chairman of the Working Group reported to the Committee on the work of the Group and introduced document E/CONF.82/C.2/L.43 containing new draft articles 20 to 28, as recommended by the Working Group.

8. This document was to the following effect:

"Article 20

"SIGNATURE

"This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

"(a) All States;

"(b) Namibia, represented by the United Nations Council for Namibia;

"(c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion, and application of international agreements in matters covered by the Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence."

"Article 21

"RATIFICATION, ACCEPTANCE, APPROVAL OR ACT OF FORMAL CONFIRMATION

"1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 20(c). The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.

"2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by this Convention.

"Article 22

"ACCESSION

"1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional

economic integration organizations referred to in article 20(c). Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

"2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by this Convention.

"Article 23

"ENTRY INTO FORCE

"1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

"2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

"3. For each regional economic integration organization referred to in article 20(c) depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1, whichever is later.

"Article 24

"DENUNCIATION

"1. A Party may denounce this Convention at any time by written notification addressed to the Secretary-General.

"2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

"Article 25

"AMENDMENTS

"1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the Secretary-General who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to be accepted and shall enter into force after a further period of one year.

"2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with paragraph 4 of Article 62 of the Charter of the United Nations.

"Article 26

"SETTLEMENT OF DISPUTES

"1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

"2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

"3. If a regional economic integration organization referred to in article 20(c) is a party to a dispute which cannot be settled in the manner prescribed in paragraph 1, it may, through a Member State of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with article 65 of the Statute of the Court which opinion shall be regarded as decisive.

"4. Each State, at the time of signature or ratification, acceptance or approval of the Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 of this article with respect to any Party having made such a declaration.

"5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

"Article 27

"AUTHENTIC TEXTS

"The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

"Article 28

"DEPOSITARY

"The Secretary-General shall be the depositary of this Convention.

"IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

"DONE AT VIENNA, in one original, this twentieth day of December one thousand nine hundred and eighty-eight."

C. Decisions

Articles 20-23

9. Articles 20-23 were adopted as contained in document E/CONF.82/C.2/L.43.

10. The representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America stated their reservation as regards the mention of Namibia in articles 20-23.

11. The representatives of Nigeria and the Philippines made a reservation concerning paragraph (c) of article 20 and paragraph 3 of article 23 regarding regional economic integration organizations.

Article 24

12. Article 24 was adopted as contained in E/CONF.82/C.2/L.43.

Article 25

13. Article 25 was adopted as contained in E/CONF.82/C.2/L.43, with the following amendment agreed upon by the Committee in accordance with an oral proposal:

(a) To replace at the end of paragraph 1 the words "after a further period of one year" by the phrase "in respect of a Party, ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment";

(b) To add at the end of paragraph 2 two new sentences reading: "Any amendment resulting from such a Conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General."

Articles 26-28

14. Articles 26-28 were adopted as contained in E/CONF.82/C.2/L.43.

15. The Committee, in accordance with the recommendation of the Working Group, decided that no article on reservations would be included in the Convention and that the matter should be left to the rules of international law as provided by the Vienna Convention on the Law of Treaties, adopted in 1969.

IV. TEXT TRANSMITTED TO THE DRAFTING COMMITTEE

16. The Committee agreed on the following text which is being transmitted to the Drafting Committee:

"Article 20

"SIGNATURE

"This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

"(a) All States;

"(b) Namibia, represented by the United Nations Council for Namibia;

"(c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion, and application of international agreements in matters covered by the Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

"Article 21

"RATIFICATION, ACCEPTANCE, APPROVAL OR ACT OF FORMAL CONFIRMATION

"1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 20(c). The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.

"2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by this Convention.

"Article 22

"ACCESSION

"1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 20(c). Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

"2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by this Convention.

*"Article 23**"ENTRY INTO FORCE*

"1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

"2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

"3. For each regional economic integration organization referred to in article 20(c) depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1, whichever is later.

*"Article 24**"DENUNCIATION*

"1. A Party may denounce this Convention at any time by written notification addressed to the Secretary-General.

"2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

*"Article 25**"AMENDMENTS*

"1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the Secretary-General who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to be accepted and shall enter into force in respect of a Party ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment.

"2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with paragraph 4 of Article 62 of the Charter of the United Nations. Any amendment resulting from such a Conference shall be

embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General.

*"Article 26**"SETTLEMENT OF DISPUTES*

"1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, inquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

"2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

"3. If a regional economic integration organization referred to in article 20(c) is a party to a dispute which cannot be settled in the manner prescribed in paragraph 1, it may, through a Member State of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with article 65 of the Statute of the Court which opinion shall be regarded as decisive.

"4. Each State, at the time of signature or ratification, acceptance or approval of the Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 of this article with respect to any Party having made such a declaration.

"5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

*"Article 27**"AUTHENTIC TEXTS*

"The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

*"Article 28**"DEPOSITARY*

"The Secretary-General shall be the depositary of this Convention.

"IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

"DONE AT VIENNA, in one original, this twentieth day of December one thousand nine hundred and eighty-eight."

Final Act, including resolutions, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

DOCUMENT E/CONF.82/14

Final Act of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

*[Original: English]
[19 December 1988]*

1. The General Assembly of the United Nations, by its resolution 39/141 of 14 December 1984, requested the Economic and Social Council of the United Nations, "taking into consideration Article 62, paragraph 3, and Article 66, paragraph 1, of the Charter of the United Nations and Council resolution 9 (I) of 16 February 1946, to request the Commission on Narcotic Drugs to initiate at its thirty-first session, to be held in February 1985, as a matter of priority, the preparation of a draft convention against illicit traffic in narcotic drugs which considers the various aspects of the problem as a whole and, in particular, those not envisaged in existing international instruments ...".

2. In furtherance of the foregoing request, and the follow-up action by the Commission on Narcotic Drugs and the Economic and Social Council, the Secretary-General of the United Nations prepared the initial text of a draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. On the basis of the comments made thereon by Governments and the deliberations of the Commission on Narcotic Drugs on that draft at its thirty-second session in 1987, the Secretary-General prepared a consolidated working document, which was circulated to all Governments in April 1987 and was considered at two sessions of an open-ended intergovernmental expert group. On 7 December 1987, the General Assembly adopted resolution 42/111, which gave further instructions for advancing the preparation of the draft Convention. As the time available to the expert group had not permitted thorough consideration of all the articles, the General Assembly requested the Secretary-General to consider convening a further intergovernmental expert group, meeting for two weeks immediately prior to the tenth special session of the Commission on Narcotic Drugs in February 1988, to continue revision of the working document on the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and, if possible, to reach agreement on the Convention. At its tenth special session, held at Vienna from 8 to 19 February 1988, the Commission on Narcotic Drugs reviewed the text of the draft Convention and decided that certain articles thereof

should be referred to the Conference to be convened to adopt a Convention. The Commission also recommended certain means to the Economic and Social Council to further the preparation of the draft Convention.

3. The Economic and Social Council, by its resolution 1988/8 of 25 May 1988, having recalled the preparatory work undertaken pursuant to General Assembly resolution 39/141 by the competent United Nations organs, decided "to convene, in accordance with Article 62, paragraph 4, of the Charter of the United Nations and within the provisions of General Assembly resolution 366 (IV) of 3 December 1949, a conference of plenipotentiaries for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances". By its decision 1988/120, also adopted on 25 May 1988, the Council decided that the Conference should be held at Vienna from 25 November to 20 December 1988 and that the Secretary-General should send invitations to participate in the Conference to those who had been invited to participate in the International Conference on Drug Abuse and Illicit Trafficking, held at Vienna from 17 to 26 June 1987.

4. By its resolution 1988/8, the Economic and Social Council also decided to convene a review group for the Conference to review the draft texts of certain articles and the draft Convention as a whole to achieve overall consistency in the text to be submitted to the Conference. The Review Group on the draft Convention met at the United Nations Office at Vienna from 27 June to 8 July 1988 and adopted a report to the Conference (E/CONF.82/3).

5. The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances met at the Neue Hofburg at Vienna from 25 November to 20 December 1988.

6. Pursuant to Economic and Social Council resolution 1988/8 of 25 May 1988 and its decision 1988/120 of the same date, the Secretary-General invited to the Conference:

- (a) All States;
- (b) Namibia, represented by the United Nations Council for Namibia;
- (c) Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices in the capacity of observers to participate in the Conference in that capacity, in accordance with Assembly resolutions 3237 (XXIX) of 22 November 1974 and 31/152 of 20 December 1976;
- (d) Representatives of the national liberation movements recognized in its region by the Organization of African Unity to participate in the Conference in the capacity of observers, in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974;
- (e) The specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations, to be represented at the Conference;
- (f) Other interested intergovernmental organizations to be represented by observers at the Conference;
- (g) Interested non-governmental organizations in consultative status with the Economic and Social Council and other interested non-governmental organizations that may have a specific contribution to make to the work of the Conference to be represented by observers at the Conference.

7. The delegations of the following 106 States participated in the Conference: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malaysia, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Saudi Arabia, Senegal, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia and Zaire.

8. The representatives of the following national liberation movements, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference (E/CONF.82/7): Pan Africanist Congress of Azania and South West Africa People's Organization.

9. The representatives of the following specialized agencies, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of

procedure of the Conference: International Civil Aviation Organization, International Labour Organisation, United Nations Educational, Scientific and Cultural Organization, United Nations Industrial Development Organization and World Health Organization.

10. The representatives of the following other inter-governmental organizations, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference: Arab Security Studies and Training Center, Colombo Plan Bureau, Council of Europe, Customs Co-operation Council, European Economic Community, International Criminal Police Organization, League of Arab States and South American Agreement on Narcotic Drugs and Psychotropic Substances.

11. The representatives of the following interested United Nations organs and related bodies, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference: Centre for Social Development and Humanitarian Affairs, International Narcotics Control Board, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and United Nations Fund for Drug Abuse Control.

12. Observers from the following non-governmental organizations, invited to the Conference by the Secretary-General, attended and participated as provided for in the rules of procedure of the Conference: Bahá'í International Community, Caritas Internationalis, Centro Italiano de Solidarietà, Colombia Therapeutic Communities, Coordinating Board of Jewish Organizations, Cruz Blanca Panama, Drug Abuse Prevention Programme, European Union of Women, Integrative Drogenhilfe a.d. Fachhochschule Ffm. e.v., International Abolitionist Federation, International Advertising Association, International Air Transport Association, International Association of Democratic Jurists, International Association of Lions Clubs, International Catholic Child Bureau, International Chamber of Commerce, International Confederation of Free Trade Unions, International Council on Women, International Council on Alcohol and Addictions, International Federation of Business and Professional Women, International Federation of Social Workers, International Pharmaceutical Federation, International Schools Association, Islamic African Relief Agency, Opium De-addiction Treatment, Training and Research Trust, Pace United Kingdom International Affairs, Pax Romana, Soroptimist International, World Association of Girl Guides and Girl Scouts, World Union of Catholic Women's Organizations and Zonta International Committee.

13. The Conference elected Mr. Guillermo Bedregal Gutiérrez (Bolivia) as President.

14. The Conference elected as Vice-Presidents the representatives of the following States: Algeria, Argentina, Bahamas, China, Côte d'Ivoire, France, Iran (Islamic Republic of), Japan, Kenya, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Philippines, Senegal, Sudan, Sweden, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

15. The Conference elected Mrs. Mervat Tallawy (Egypt) as Rapporteur-General.

16. The following Committees were set up by the Conference:

General Committee

Chairman: The President of the Conference

Members: The President and Vice-Presidents of the Conference, the Rapporteur-General of the Conference, the Chairmen of the Committees of the Whole and the Chairman of the Drafting Committee.

Committees of the Whole

Committee I

Chairman: Mr. Gioacchino Polimeni (Italy)

Vice-Chairman: Mr. M. A. Hena (Bangladesh)

Rapporteur: Mr. Oskar Hugler (German Democratic Republic)

Committee II

Chairman: Mr. István Bayer (Hungary)

Vice-Chairman: Mr. L. H. J. B. van Gorkom (Netherlands)

Rapporteur: Mrs. Yolanda Fernández Ochoa (Costa Rica)

Drafting Committee

Chairman: Mr. M. V. N. Rao (India)

Vice-Chairman: Mr. Hashem M. Kuraa (Egypt)

Members: The Chairman of the Drafting Committee and the representatives of the following States: Australia, Botswana, Canada, China, Colombia, Czechoslovakia, Egypt, France, Ghana, Iraq, Peru, Senegal, Spain and Union of Soviet Socialist Republics.

The Rapporteurs of the Committees of the Whole participated ex officio in the work of the Drafting Committee in accordance with rule 49 of the rules of procedure of the Conference.

Credentials Committee

Chairman: Mr. Edouard Molitor (Luxembourg)

Members: The representatives of the following States: Bolivia, Botswana, China, Côte d'Ivoire, Jamaica, Luxembourg, Thailand, Union of Soviet Socialist Republics and United States of America.

17. The Secretary-General of the United Nations was represented by Miss Margaret J. Anstee, Under-Secretary-General, Director-General of the United Nations Office at Vienna. Mr. Francisco Ramos-Galino, Director of the Division of Narcotic Drugs, was appointed by the Secretary-General as Executive Secretary.

18. The Conference had before it the report of the Review Group convened pursuant to Economic and Social Council resolution 1988/8 of 25 May 1988 (E/CONF.82/3). In addition to an account of the work of the Review Group, the report contained proposals submitted to the

Review Group relating to the draft Convention for consideration by the Conference, and the text of the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (annex II). This draft Convention constituted the basic proposal for consideration by the Conference.

19. The Conference in the course of its work divided the articles contained in the draft Convention between the two Committees of the Whole (Committee I and Committee II). Articles 1 to 5 and the preamble were referred to Committee I and the remaining articles to Committee II. The Committees of the Whole, after agreeing upon the text of a particular article, referred it to the Drafting Committee. The Committees of the Whole reported to the Conference on the outcome of their work and the Drafting Committee submitted to the Conference a complete text of the draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/13).

20. On the basis of the deliberations set forth in the records of the Conference (E/CONF.82/SR.1 to 8) and of the Committees of the Whole (E/CONF.82/C.1/SR.1 to 33 and E/CONF.82/C.2/SR.1 to 34) and the reports of the Committees of the Whole (E/CONF.82/11 and E/CONF.82/12) and the Drafting Committee (E/CONF.82/13), the Conference drew up the following Convention:

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

21. The foregoing Convention, which is subject to ratification, acceptance, approval or act of formal confirmation, and which shall remain open for accession, was adopted by the Conference on 19 December 1988 and opened for signature on 20 December 1988, in accordance with its provisions, until 28 February 1989 at the United Nations Office at Vienna and, subsequently, until 20 December 1989, at the Headquarters of the United Nations at New York, the Secretary-General of the United Nations being the depositary.

22. The Conference also adopted the following resolutions, which are annexed to this Final Act:

1. Exchange of information
2. Provisional application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
3. Provision of necessary resources to the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to enable them to discharge the tasks entrusted to them under the International Drug Control Treaties

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE AT VIENNA this twentieth day of December one thousand nine hundred and eighty-eight, in a single copy, which will be deposited with the Secretary-General of the United Nations, in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

ANNEX

Resolutions adopted by the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

1. Exchange of information
2. Provisional application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
3. Provision of necessary resources to the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to enable them to discharge the tasks entrusted to them under the International Drug Control Treaties

RESOLUTION 1*Exchange of information*

The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Calling attention to resolution III adopted by the 1961 United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, in which attention was drawn to the importance of the technical records on international drug traffickers of the International Criminal Police Organization and their use by that organization for the circulation of descriptions of such traffickers,

Considering the machinery developed by the International Criminal Police Organization for the timely and efficient exchange of crime investigation information between police authorities on a worldwide basis,

Recommends that the widest possible use should be made by police authorities of the records and communications system of the International Criminal Police Organization in achieving the goals of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

RESOLUTION 2*Provisional application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*

The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

1. *Urges* States, to the extent that they are able to do so, to accelerate steps to ratify the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances so that it enters into force as quickly as possible;

2. *Invites* States, to the extent that they are able to do so, to apply provisionally the measures provided in the Convention pending its entry into force for each of them;

3. *Requests* the Secretary-General to transmit the present resolution to the Economic and Social Council and the General Assembly.

RESOLUTION 3*Provision of necessary resources to the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to enable them to discharge the tasks entrusted to them under the International Drug Control Treaties*

The United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Recognizing that the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971, remain the basis for international efforts in the control of narcotic drugs and psychotropic substances, and that strict implementation both by Governments and by the international control organs of the United Nations of the obligations arising from the Conventions is essential to achieve their aims,

Considering that the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances will create further obligations and financial outlays for Governments, the Commission on Narcotic Drugs, the International Narcotics Control Board and their secretariats,

Deeply disturbed by the impact of recent staffing and budgetary reductions on the capacity of both the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to carry out fully their mandated programme of work,

1. *Urges* all Member States to take appropriate steps in the General Assembly as well as in the financial organs of the Assembly to assign the appropriate priority and approve the necessary budgetary appropriations with a view to providing the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board with the necessary resources to discharge fully the tasks entrusted to them under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971;

2. *Requests* the Secretary-General to take the necessary steps, within his competence, to give effect to the provisions of paragraph 1 above.

DOCUMENT E/CONF.82/15*

United Nations Convention against Illicit Traffic in
Narcotic Drugs and Psychotropic Substances

Adopted by the Conference at its 6th plenary meeting, on 19 December 1988

[Original: English]
[19 December 1988]

The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Deeply concerned also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,

Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances,

Determined to improve international cooperation in the suppression of illicit traffic by sea,

Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, co-ordinated action within the framework of international cooperation is necessary,

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desirous that the international organs concerned with such control should be within the framework of that Organization,

Reaffirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody,

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences,

Recognizing also the importance of strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international criminal activities of illicit traffic,

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances,

Hereby agree as follows:

Article 1

DEFINITIONS

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout this Convention:

(a) "Board" means the International Narcotics Control Board established by the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(b) "Cannabis plant" means any plant of the genus *Cannabis*;

(c) "Coca bush" means the plant of any species of the genus *Erythroxylon*;

*Incorporating E/CONF.82/15/Corr.2, dated 20 December 1988.

(d) "Commercial carrier" means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;

(e) "Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;

(f) "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;

(g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1, of the Convention;

(h) "1961 Convention" means the Single Convention on Narcotic Drugs, 1961;

(i) "1961 Convention as amended" means the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(j) "1971 Convention" means the Convention on Psychotropic Substances, 1971;

(k) "Council" means the Economic and Social Council of the United Nations;

(l) "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;

(m) "Illicit traffic" means the offences set forth in article 3, paragraphs 1 and 2, of this Convention;

(n) "Narcotic drug" means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(o) "Opium poppy" means the plant of the species *Papaver somniferum* L;

(p) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;

(q) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(r) "Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;

(s) "Secretary-General" means the Secretary-General of the United Nations;

(t) "Table I" and "Table II" mean the correspondingly numbered lists of substances annexed to this Convention, as amended from time to time in accordance with article 12;

(u) "Transit State" means a State through the territory of which illicit narcotic drugs, psychotropic substances and substances in Table I and Table II are being moved, which is neither the place of origin nor the place of ultimate destination thereof.

Article 2

SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

Article 3

OFFENCES AND SANCTIONS

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

- (a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
- (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
- (iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
- (iv) The manufacture, transport or distribution of equipment, materials or of substances listed in

Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

- (v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;
- (b) (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;
- (c) Subject to its constitutional principles and the basic concepts of its legal system:
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;
 - (ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
 - (iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;
 - (iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

4. (a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

(b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, after-care, rehabilitation or social reintegration.

(c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and after-care.

(d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, after-care, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as:

(a) The involvement in the offence of an organized criminal group to which the offender belongs;

(b) The involvement of the offender in other international organized criminal activities;

(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;

(d) The use of violence or arms by the offender;

(e) The fact that the offender holds a public office and that the offence is connected with the office in question;

(f) The victimization or use of minors;

(g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which schoolchildren and students resort for educational, sports and social activities;

(h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

7. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 of this article and

the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.

10. For the purpose of cooperation among the Parties under this Convention, including, in particular, cooperation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 4

JURISDICTION

1. Each Party:

(a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

- (i) The offence is committed in its territory;
- (ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;

(b) May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

- (i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;
- (ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;
- (iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph (c)(iv), and is committed outside its

territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1.

2. Each Party:

(a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

- (i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed; or
- (ii) That the offence has been committed by one of its nationals;

(b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

Article 5

CONFISCATION

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;

(b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with article 3, paragraph 1.

2. Each Party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article, for the purpose of eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

- (i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

(b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party.

(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.

(d) The provisions of article 7, paragraphs 6 to 19, are applicable *mutatis mutandis*. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:

- (i) In the case of a request pertaining to subparagraph (a)(i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
- (ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;
- (iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

(e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

(f) If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.

(g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

5. (a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall

be disposed of by that Party according to its domestic law and administrative procedures;

(b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:

- (i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;
- (ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

(c) Income or other benefits derived from:

- (i) Proceeds;
- (ii) Property into which proceeds have been transformed or converted; or
- (iii) Property with which proceeds have been intermingled

shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

Article 6

EXTRADITION

1. This article shall apply to the offences established by the Parties in accordance with article 3, paragraph 1.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The

Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. The Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. The Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall:

(a) If it does not extradite him in respect of an offence established in accordance with article 3, paragraph 1, on the grounds set forth in article 4, paragraph 2, subparagraph (a), submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party;

(b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 4, paragraph 2, subparagraph (b), submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

11. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

12. The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

Article 7

MUTUAL LEGAL ASSISTANCE

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1.

2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures;
- (d) Examining objects and sites;
- (e) Providing information and evidentiary items;
- (f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

3. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

4. Upon request, the Parties shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

5. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

7. Paragraphs 8 to 19 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 8 to 19 of this article in lieu thereof.

8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject-matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
- (c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned;
- (f) The purpose for which the evidence, information or action is sought.

11. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

13. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than

those stated in the request without the prior consent of the requested Party.

14. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

15. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;
- (c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

16. Reasons shall be given for any refusal of mutual legal assistance.

17. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

20. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral

agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

Article 8

TRANSFER OF PROCEEDINGS

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice.

Article 9

OTHER FORMS OF COOPERATION AND TRAINING

1. The Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with article 3, paragraph 1. They shall, in particular, on the basis of bilateral or multilateral agreements or arrangements:

(a) Establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 3, paragraph 1, including, if the Parties concerned deem it appropriate, links with other criminal activities;

(b) Cooperate with one another in conducting enquiries, with respect to offences established in accordance with article 3, paragraph 1, having an international character, concerning:

- (i) The identity, whereabouts and activities of persons suspected of being involved in offences established in accordance with article 3, paragraph 1;
- (ii) The movement of proceeds or property derived from the commission of such offences;
- (iii) The movement of narcotic drugs, psychotropic substances, substances in Table I and Table II of this Convention and instrumentalities used or intended for use in the commission of such offences;

(c) In appropriate cases and if not contrary to domestic law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected;

(d) Provide, when appropriate, necessary quantities of substances for analytical or investigative purposes;

(e) Facilitate effective coordination between their competent agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers.

2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement and other personnel, including customs, charged with the suppression of offences established in accordance with article 3, paragraph 1. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection and suppression of offences established in accordance with article 3, paragraph 1;

(b) Routes and techniques used by persons suspected of being involved in offences established in accordance with article 3, paragraph 1, particularly in transit States, and appropriate countermeasures;

(c) Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in Table I and Table II;

(d) Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in Table I and Table II, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 3, paragraph 1;

(e) Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;

(f) Collection of evidence;

(g) Control techniques in free trade zones and free ports;

(h) Modern law enforcement techniques.

3. The Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

Article 10

INTERNATIONAL COOPERATION AND ASSISTANCE FOR TRANSIT STATES

1. The Parties shall cooperate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical cooperation on interdiction and other related activities.

2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article and may take into consideration financial arrangements in this regard.

Article 11

CONTROLLED DELIVERY

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

Article 12

SUBSTANCES FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall cooperate with one another to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both

for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

(a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;

(b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States and other entities which are, or which are entitled to become, Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party one hundred and eighty days after the date of such communication.

7. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within one hundred and eighty days after the date of notification of the decision. The request for review shall be sent to the Secretary-General, together with all relevant information upon which the request for review is based.

(b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit their comments within ninety days. All comments received shall be submitted to the Council for consideration.

(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States and other entities which are, or which are entitled to become, Parties to this Convention, to the Commission and to the Board.

8. (a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table II which are carried out within their territory.

(b) To this end, the Parties may:

(i) Control all persons and enterprises engaged in the manufacture and distribution of such substances;

- (ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;
- (iii) Require that licensees obtain a permit for conducting the aforesaid operations;
- (iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

9. Each Party shall, with respect to substances in Table I and Table II, take the following measures:

(a) Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close cooperation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions.

(b) Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance.

(c) Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief.

(d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or exported, and the name and address of the exporter, the importer and, when available, the consignee.

(e) Ensure that documents referred to in subparagraph (d) of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

10. (a) In addition to the provisions of paragraph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

- (i) Name and address of the exporter and importer and, when available, the consignee;
- (ii) Name of the substance in Table I;
- (iii) Quantity of the substance to be exported;
- (iv) Expected point of entry and expected date of dispatch;
- (v) Any other information which is mutually agreed upon by the Parties.

(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

11. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10 of this article, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.

12. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

(a) The amounts seized of substances in Table I and Table II and, when known, their origin;

(b) Any substance not included in Table I or Table II which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

(c) Methods of diversion and illicit manufacture.

13. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Table I and Table II.

14. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

Article 13

MATERIALS AND EQUIPMENT

The Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall cooperate to this end.

Article 14

MEASURES TO ERADICATE ILLICIT CULTIVATION OF NARCOTIC PLANTS AND TO ELIMINATE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its

territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. (a) The Parties may cooperate to increase the effectiveness of eradication efforts. Such cooperation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. The Parties may agree on any other appropriate measures of cooperation.

(b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

(c) Whenever they have common frontiers, the Parties shall seek to cooperate in eradication programmes in their respective areas along those frontiers.

4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, *inter alia*, on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations, and on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. The Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances.

Article 15

COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3, paragraph 1; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences established in accordance with article 3, paragraph 1. Such precautions may include:

(a) If the principal place of business of a commercial carrier is within the territory of the Party:

- (i) Training of personnel to identify suspicious consignments or persons;
- (ii) Promotion of integrity of personnel;

(b) If a commercial carrier is operating within the territory of the Party:

- (i) Submission of cargo manifests in advance, whenever possible;
- (ii) Use of tamper-resistant, individually verifiable seals on containers;
- (iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious circumstances that may be related to the commission of offences established in accordance with article 3, paragraph 1.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas cooperate, with a view to preventing unauthorized access to means of transport and cargo and to implementing appropriate security measures.

Article 16

COMMERCIAL DOCUMENTS AND LABELLING OF EXPORTS

1. Each Party shall require that lawful exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the 1961 Convention, article 31 of the 1961 Convention as amended and article 12 of the 1971 Convention, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as set out in the respective Schedules of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the quantity being exported, and the name and address of the exporter, the importer and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabelled.

Article 17

ILLCIT TRAFFIC BY SEA

1. The Parties shall cooperate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, *inter alia*:

- (a) Board the vessel;
- (b) Search the vessel;
- (c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.

6. The flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

9. The Parties shall consider entering into bilateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

10. Action pursuant to paragraph 4 of this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.

Article 18

FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

(a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower the competent authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to search crew members, passengers and their baggage;

(b) To establish and maintain a system to detect consignments suspected of containing narcotic drugs, psychotropic substances and substances in Table I and Table II passing into or out of free trade zones and free ports;

(c) To establish and maintain surveillance systems in harbour and dock areas and at airports and border control points in free trade zones and free ports.

Article 19

THE USE OF THE MAILS

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of their domestic legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

2. The measures referred to in paragraph 1 of this article shall include, in particular:

(a) Coordinated action for the prevention and repression of the use of the mails for illicit traffic;

(b) Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Table I and Table II in the mails;

(c) Legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings.

Article 20

INFORMATION TO BE FURNISHED BY THE PARTIES

1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of this Convention in their territories and, in particular:

(a) The text of laws and regulations promulgated in order to give effect to the Convention;

(b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new

trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by persons so engaged.

2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

Article 21

FUNCTIONS OF THE COMMISSION

The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular:

(a) The Commission shall, on the basis of the information submitted by the Parties in accordance with article 20, review the operation of this Convention;

(b) The Commission may make suggestions and general recommendations based on the examination of the information received from the Parties;

(c) The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board;

(d) The Commission shall, on any matter referred to it by the Board under article 22, paragraph 1(b), take such action as it deems appropriate;

(e) The Commission may, in conformity with the procedures laid down in article 12, amend Table I and Table II;

(f) The Commission may draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

Article 22

FUNCTIONS OF THE BOARD

1. Without prejudice to the functions of the Commission under article 21, and without prejudice to the functions of the Board and the Commission under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention:

(a) If, on the basis of its examination of information available to it, to the Secretary-General or to the Commission, or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to furnish any relevant information;

(b) With respect to articles 12, 13 and 16:

(i) After taking action under subparagraph (a) of this article, the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 12, 13 and 16;

(ii) Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

(iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

2. Any Party shall be invited to be represented at a meeting of the Board at which a question of direct interest to it is to be considered under this article.

3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

5. In carrying out its functions pursuant to subparagraph 1(a) of this article, the Board shall ensure the confidentiality of all information which may come into its possession.

6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between Parties in accordance with the provisions of this Convention.

7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 32.

Article 23

REPORTS OF THE BOARD

1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal and, in appropriate cases, an account of the explanations, if any, given by or required of Parties, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

Article 24

APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion,

such measures are desirable or necessary for the prevention or suppression of illicit traffic.

Article 25

NON-DEROGATION FROM EARLIER TREATY RIGHTS AND OBLIGATIONS

The provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

Article 26

SIGNATURE

This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

- (a) All States;
- (b) Namibia, represented by the United Nations Council for Namibia;
- (c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

Article 27

RATIFICATION, ACCEPTANCE, APPROVAL OR ACT OF FORMAL CONFIRMATION

1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 26, subparagraph (c). The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.
2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 28

ACCESSION

1. This Convention shall remain open for accession by any State, by Namibia, represented by the United

Nations Council for Namibia, and by regional economic integration organizations referred to in article 26, subparagraph (c). Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 29

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.
2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to this Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.
3. For each regional economic integration organization referred to in article 26, subparagraph (c), depositing an instrument relating to an act of formal confirmation or an instrument of accession, this Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 30

DENUNCIATION

1. A Party may denounce this Convention at any time by a written notification addressed to the Secretary-General.
2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

Article 31

AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the Secretary-General, who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed

to have been accepted and shall enter into force in respect of a Party ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment.

2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with Article 62, paragraph 4, of the Charter of the United Nations. Any amendment resulting from such a conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General.

Article 32

SETTLEMENT OF DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph (c), is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to

request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any Party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

Article 33

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

Article 34

DEPOSITARY

The Secretary-General shall be the depositary of this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE AT VIENNA in one original, this twentieth day of December one thousand nine hundred and eighty-eight.

ANNEX

Table I

Ephedrine
Ergometrine
Ergotamine
Lysergic acid
1-phenyl-2-propanone
Pseudoephedrine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

Table II

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Phenylacetic acid
Piperidine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

LIST OF PARTICIPANTS*

Delegations

AFGHANISTAN

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Zylyftar Ramizi, Member of the Board of Directors of the Ministry of Health

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Ilir Cepani, First Secretary, Embassy of the Popular Socialist Republic of Albania to Austria
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Skender Duresi, Specialist of the Ministry of Health

ALGERIA

Head of delegation

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William James Stoll, Representative, Australian Federal Police, London
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William James Hemmings, First Secretary, Australian Permanent Mission to the United Nations, Vienna
Louise Helen Hand, Third Secretary, Australian Permanent Mission to the United Nations, Vienna

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Josef Muster, Federal Chancellery, Department VI (Public Health)
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*Based on the revised version of the provisional list of participants (E/CONF.82/INF.2/Rev.2).

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Representative

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MOROCCO

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Deputy head of delegation

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PAN AFRICANIST CONGRESS OF AZANIA

Cecil Msomi
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SOUTH WEST AFRICA PEOPLE'S ORGANIZATION

Kalumbi Shangula

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Category II

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INTERNATIONAL ABOLITIONIST FEDERATION

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M. Atkinson (25 November-9 December 1988)
Rodney Wallis (12-20 December 1988)

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INTERNATIONAL COUNCIL ON ALCOHOL AND ADDICTIONS

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INTERNATIONAL FEDERATION OF SOCIAL WORKERS

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INTERNATIONAL FEDERATION OF UNIVERSITY WOMEN

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EUROPEAN UNION OF WOMEN

Emmy Schwarzl
Maria Schenk

PACE-UNITED KINGDOM INTERNATIONAL AFFAIRS

Eva Pesendorfer

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Beatriz Correa
María Teresa Morales

CRUZ BLANCA, PANAMA

Elvia E. R. Lefèvre de Wirz

DRUG ABUSE PREVENTION PROGRAMME

Walter da Costa

INTEGRATIVE DROGENHILFE AN DER FACHHOCHSCHULE

Werner Schneider
Jürgen Wiemer

OPIUM DE-ADDICTION TREATMENT, TRAINING AND RESEARCH TRUST

Narayan Sing Manaklao

Conference secretariat

Francisco Ramos-Galino, Director, Division of Narcotic Drugs, Executive Secretary of the Conference

Paulsen K. Bailey, Secretary of the Conference, the General Committee and Committee I

Kwame Opoku, Legal Adviser and Secretary of the Credentials Committee

Henri Mazaud, Legal Consultant

John Scott, Legal Consultant

Bertrand Juppín de Fondaumière, Deputy Director, Division of Narcotic Drugs, Office of the Executive Secretary

Pilar Santander-Downing, Secretary of Committee II

Jonathan Lucas, Assistant Secretary of the Plenary and Committee I

Beatriz Romero, Assistant Secretary of the Drafting Committee

Masumbuku P. Salay, Information and NGO Officer

Luis Mañueco-Jenkins, Senior Officer for the Drafting Committee

Kalman Szendrei, Senior Scientific Officer for Committee II

Valerie Lebaux, Assistant Secretary of Committee II

Hilde van Lindt, Assistant Secretary of Committee II

Susana Rico-Torres, Assistant Secretary of the Credentials Committee

Mohamed Al-Mulla, Associate Officer for Committee I

Curtis Raynold, Associate Officer for the Drafting Committee

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<i>Symbol</i>	<i>Title or description</i>	<i>Agenda item</i>	<i>Observations and references</i>
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