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 II:
Summary records of plenary meetings
Summary records of meetings of Committee I and Committee II
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

References to dollars ($) are to United States dollars, unless otherwise stated.
The following abbreviations and short forms are used in this publication:

AIDS  acquired immunodeficiency syndrome
CCC  Customs Co-operation Council
EEC  European Economic Community
EEZ  exclusive economic zone
IAEA  International Atomic Energy Agency
ICAO  International Civil Aviation Organization
ICPO/Interpol  International Criminal Police Organization
ILO  International Labour Organisation
IMO  International Maritime Organization
LSD  (+)-lysergide
MDA  methylenedioxyamphetamine
SAARC  South Asian Association for Regional Co-operation
WHO  World Health Organization
1961 Convention  Single Convention on Narcotic Drugs, 1961
1971 Convention  Convention on Psychotropic Substances, 1971
               Drugs, 1961

Countries are referred to by the names that were in official use at the time.
OPENING OF THE CONFERENCE
(item 1 of the provisional agenda)

1. The ACTING PRESIDENT, speaking as the representative of the Secretary-General, declared the Conference open. She said that the Secretary-General attached the highest priority to the control of drug abuse and would have been present at the Conference had it not coincided with the forty-third session of the General Assembly.

2. The Conference was about to carry forward multilateral work on the subject that went back as far as 1909, when the Shanghai meeting had been called to discuss ways to control the illicit traffic in drugs. The subsequent meeting of the Opium Commission had paved the way for the signing in 1912 of the International Opium Convention—the first drug control treaty. Other binding international instruments had since been drafted and codified under the auspices of the League of Nations and, since 1946, the United Nations. The process had resulted in the Single Convention on Narcotic Drugs, 1961, which had codified and consolidated existing treaties and had itself been amended by the 1972 Protocol, designed to strengthen the international drug control system further. In 1971 the Convention on Psychotropic Substances had extended international control to a broad range of other dependence-producing substances.

3. The Conference thus represented the culmination of long and arduous years of efforts to deal with drug abuse, the illicit drug traffic and its terrible consequences. She wished to pay a special tribute to the Commission on Narcotic Drugs, which had played a key role in the preparation of the draft convention against illicit traffic in narcotic drugs and psychotropic substances, and to the participants in the open-ended intergovernmental expert group to consider the draft convention and the Review Group on the draft convention, both of which had helped to lay the groundwork for the Conference.

4. There was a new sense of urgency in the present endeavour. For a number of years, drug abuse had been recognized as a particularly grave threat, not only to health and individual well-being but to society as a whole. Concern about it among parents, educators, religious leaders and the public had become widespread and had reached the highest governmental circles. The initiative of a number of Latin American countries, reflected in the Quito Declaration against Traffic in Narcotic Drugs, the Lima Declaration of 29 July 1985 and the New York Declaration against Drug Trafficking and the Illicit Use of Drugs, had led to the General Assembly's call in resolution 39/141, for the preparation of a new convention against illicit traffic in narcotic drugs and psychotropic substances.

5. Furthermore, in June 1987 the International Conference on Drug Abuse and Illicit Trafficking had adopted a major declaration in which the 138 participating States had recognized their collective responsibility to provide appropriate resources for the elimination of illicit production, trafficking and drug abuse. The declaration had called for the urgent but careful preparation and finalization of the draft convention; the Conference had taken the view that the drug problem was universal and should be solved, not by the arbitrary attribution of blame to countries but by a common determination to shoulder a shared responsibility and attack simultaneously all aspects of the scourge: supply, demand, trafficking, and the prevention and treatment of addiction.

6. The new convention aimed to provide the international community with more effective tools to cope with illicit drug trafficking. Because drug trafficking took place through a highly organized web of transnational criminality, it must be countered not only by adequate legislation and action at the national level, but also by concerted action on the part of Member States to close the loopholes which so often made national measures ineffective. It was imperative to provide for wide extradition possibilities and appropriate criminal jurisdiction and to address conspiracy
and money-laundering schemes. Criminal sanctions must be harmonized and be adapted to the form of criminality which drug trafficking involved; they must, for instance, include the confiscation of proceeds derived from drug-related offences. The draft convention was designed to hit the enemy, drug traffickers, where it hurt them most: in their pockets and in their liberty of movement. The amount of money involved in illicit drug trafficking was staggering; a single drug, cocaine, was worth billions of dollars on the illicit market. Illegal drugs were estimated to have overtaken oil as a source of revenue globally; they were now the world's second biggest trading commodity, next to armaments, and amounted to 9 per cent of all international merchandise in value. In some cases, the astronomical profits of the drug trade were used to create alternative economies and to undermine legislative and political systems.

7. The impact of drugs on youth was particularly costly. The time had come for the international community to make it forcefully known that it would no longer tolerate the poisoning of future generations, the sapping of the integrity of institutions and the jeopardizing of the future of societies. The growing link between drug abuse and the terrible scourge of acquired immunodeficiency syndrome (AIDS) brought a new and horrifying tone to an already sombre picture. A strong new convention and its broad implementation would be the clearest possible demonstration that nations meant business in co-operating in order to deal with a common enemy whose tentacles now infiltrated all regions of the world.

8. A number of delicate new issues arising from the legal complexity and economic and political sensitivity of the drug trafficking problem had still to be resolved. She urged delegations not to be discouraged by that but to regard it as a challenge to them to find mutually acceptable solutions to those problems that would strengthen a new and vital international instrument. The Conference would be an acid test of Governments' willingness to translate political commitment into effective action for the benefit of mankind. Some of the proposals before it might seem to impinge upon certain aspects of sovereignty, but in the light of the growing danger to all societies from drug abuse, they could, on the contrary, be shown to reinforce sovereignty in its most fundamental sense.

9. The translation of international co-operation into a valid instrument for resolving problems in an interdependent world constantly involved the competing claims of what were perceived, not always correctly, as the best interests of individual States, regions or groups of countries. In the weeks ahead, she hoped delegations would be wary of over-emphasizing individual interests and keep their sights fixed on the overriding aim: the adoption of a strong convention that commanded the support of the widest possible spectrum of Member States. That would be the surest way of safeguarding the integrity of the world's societies. It was essential to the preservation of the cultural and ethical values dear to all delegations present.

ELECTION OF THE PRESIDENT (item 2 of the provisional agenda)

10. Mr. Bedregal-Gutierrez (Bolivia) was elected President by acclamation and took the Chair.

11. The PRESIDENT thanked delegations for electing him to head a historic assembly at which all participants had the responsibility for transcending the minor differences separating them in order to arm mankind with a modern and effective international instrument which would facilitate the annihilation of organized illegal drug trafficking. The draft convention was the fruit of nearly four years' work in the United Nations in which the determined endeavours of the United Nations Fund for Drug Abuse Control and the Group of Latin American and Caribbean States deserved special mention. The Government of Austria deserved sincere thanks for hosting the Conference. The Secretary-General, the Director-General of the United Nations Office at Vienna and the other Secretariat officials responsible for drug control-related activities were to be warmly commended for carrying on the fight against drug abuse and illicit drug trafficking. He pledged to continue it with all the vigour and skill he possessed.

12. The results achieved in the international campaign against drug abuse and trafficking since the 1987 International Conference on Drug Abuse and Illicit Trafficking promised concrete results at the present Conference. Developing countries were making major efforts to control the supply of drugs and the industrialized countries were achieving progress in reducing the demand for them. Modern anti-drug legislation was beginning to take shape as a fundamental weapon against drug abuse. The adoption of the draft convention was especially important in order to provide a tool that would complement the technical activities of national specialists. The Conference bore a responsibility before history to succeed, for the exploitation of agony for monetary gain through the diabolical machinations of drug trafficking now knew no political, ideological or moral boundaries. The new convention would enable nations to create machinery to meet the new dimensions of drug trafficking in the 1980s. The various aspects of the traffic—production, distribution and consumption—called for modern laws based on a regional approach to the drug problem in which national legislation was harmonized in such a way that every manifestation of drug crime was characterized and penalized in a uniform manner.

13. The technical work that had gone into the preparation of the draft convention had revealed that in the past quarter of a century world morphine consumption had risen thirtyfold and cocaine consumption seventyfold. What had previously been a habit of well-to-do minorities had now penetrated all classes of society, especially among the young. Trafficking, once the work of only a handful of gangs, had become a perverse transnational enterprise with political and social ramifications which corrupted officials and destroyed human lives and national resources.
14. It was essential to forge new arms that would improve on the older ones. The Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control adopted at Vienna in 1987 provided a broad framework for that and the draft convention incorporated mandatory provisions that would bring new strength to the solution of the problem. The convention would involve all nations and all of mankind in that task.

15. Illicit drug trafficking was not a new phenomenon, but since 1945 it had acquired an international dimension and had begun to affect international economics and politics. Requiring transnational finance and offering high returns, it benefited from the participation of new agents such as banks and corporations and necessitated the creation of illegal machinery for recycling profits, thus involving large sections of the population in its activities. Drug trafficking had a highly structured world of its own—a horrifying one of crime, violence, corrupt deals and moral seduction.

16. The influence of illicit drug trafficking penetrated to legitimate channels of production, distribution and consumption. Trafficking generated ill-gotten gains which destroyed social relations. Its political and economic infiltration of strategic civilian and military institutions constituted a threat to national security and sovereignty. If the phenomenon was viewed in broad terms of that kind it became possible to devise more effective strategies for it than those resulting from narrow categorizations in terms of ethics, criminal justice or medical care. In short, seeing the full dimensions of drug trafficking was the best way to ensure that policies and actions were commensurate with the true size of the problem.

17. The criminal organizations that controlled the drug trafficking network were versatile, efficient and powerful, and were governed by an established code that prevented the rules of the game from being broken. The transnationalization of finances had given drug traffickers the option of unrestricted and anonymous mobility of resources. That, added to their direct investments in developed countries, diminished the amount of capital returning to the producing countries. The North American market alone was calculated to be worth $110 billion, of which illicit cocaine trafficking accounted for approximately 75 per cent. World-wide revenues from drug trafficking were estimated at $500 billion annually; of that amount, only some 10 per cent remained in the countries which produced the raw material for drug manufacturing. Not only were new patterns of accumulation thus developing, but the amount of money involved in illicit activities now exceeded expenditure in fundamental areas such as housing, health and education. At a time when the external debt of a number of countries, particularly in Latin America, was restricting their development efforts, drug trafficking had emerged as a cancer which was exacerbating their economic crisis.

18. Trafficking was the result of social problems in countries beset with unemployment, unjust distribution of earnings, illiteracy, inadequate services and inefficient distribution of welfare benefits to the population. Governments had attempted to employ legal and ethical methods of dealing with it which involved law enforcement and medical attention. The creation of institutions specializing in the treatment of drug problems in recent years had facilitated analysis of the policies being used to combat drug trafficking. Unidirectional methods of that kind were now being superseded by new criteria in international, subregional and regional strategies. Fragmentary solutions were being replaced by integral approaches which designated society as a whole as the main force in sustaining a prolonged struggle against the devastating effects of illicit drug trafficking.

19. In some industrialized countries it had been advocated that drug consumption should be made legal. That approach was a frivolous and defeatist one, founded on false premises, which drew an analogy between the use of drugs and the consumption of alcohol, tobacco and other stimulants. It represented a movement which could only be halted by a forceful and comprehensive multilateral convention constituting a universal weapon to preserve human health and decency.

20. Drugs had become a scourge of humanity and a world alliance of forces was needed to isolate the common enemy and put him to rout. An attempt was sometimes made to justify illicit trafficking on the grounds that it generated resources and foreign exchange for national or regional economies in a time of crisis. In reality, however, the illicit traffic in drugs distorted national economies and its surpluses were not reinvested domestically but transferred to accounts abroad. The myth of the supposed benefits of the illicit traffic in drugs must be destroyed.

21. In the social field, the illicit traffic was a threat to the populations of consumer, producer and transit countries and to social stability and democracy. Some plants which could be used to make drugs had legitimate traditional uses, but those uses must be clearly differentiated from the ones aimed at by illicit activities, which must be strenuously combated. The populations affected must be assisted in developing alternative activities.

22. Another myth was that drugs could be used as some kind of revolutionary weapon to change economic and social systems or promote national interests, but in fact drug abuse and the illicit traffic threatened the sovereignty and security of States and no nation was immune from it.

23. The plenipotentiaries assembled at the present Conference must unite in the defence of the human race against the common enemy. A new legal instrument, adapted to the new characteristics of the world drug problem, was required. In addition, as means of combating the drug traffic, efforts must be made to promote markets for the products introduced as substitutes for the raw materials used to produce drugs and the right to development of the populations affected by the presence of the drug traffic must be recognized.

24. He appealed to participants to be guided by sentiments of solidarity and a spirit of reconciliation in seeking to resolve the minor differences standing in the way of the finalization of the draft convention in order to ensure the success of humanity’s war on drugs.
ORGANIZATIONAL AND PROCEDURAL MATTERS (item 3 of the provisional agenda)

25. The PRESIDENT referred to rule 18 of the provisional rules of procedure (E/CONF.82/2) and to the report of the pre-conference consultations (E/CONF.82/5). The report contained various recommendations: that the Conference should decide to establish two parallel Committees of the Whole reporting directly to it in plenary session, instead of one Committee of the Whole and a sub-committee (para. 4); that, as a consequence, the Conference should elect five officers and 24 Vice-Presidents instead of four officers and 25 Vice-Presidents, for the reasons explained in the report (para. 5); that, as a further consequence, the Conference should amend item 3(f) of the provisional agenda (E/CONF.82/1) to read “Establishment of Committees of the Whole”; and that, as a result of those changes, it should amend the provisional rules of procedure (E/CONF.82/2) in the manner specified in the report (para. 7).

26. He invited the Conference to consider those recommendations.

27. The recommendations were adopted.

(a) Adoption of the rules of procedure (E/CONF.82/2); and

(b) Adoption of the agenda (E/CONF.82/1)

28. The provisional rules of procedure (E/CONF.82/2), as amended, and the provisional agenda (E/CONF.82/1), as amended, were adopted.

(c) Election of officers other than the President

29. Mr. Polimeni (Italy) was elected Chairman of Committee I by acclamation.

30. Mr. Bayer (Hungary) was elected Chairman of Committee II by acclamation.

31. Mr. Rao (India) was elected Chairman of the Drafting Committee by acclamation.

32. The PRESIDENT invited nominations for the posts of the other officers of the Conference.

33. Mrs. TALLAWY (Egypt), speaking on behalf of the African Group of States, said that the African Group nominated her for the post of Rapporteur-General.

34. Mrs. Tallawy (Egypt) was elected Rapporteur-General of the Conference by acclamation.

35. Mr. PROENCA ROSA (Brazil), speaking on behalf of the Latin American and Caribbean Group of States, nominated the following candidates for the posts of Vice-President: Argentina, Bahamas, Mexico, Venezuela.

36. Mrs. TALLAWY (Egypt), speaking on behalf of the African Group of States, nominated the following candidates for the posts of Vice-President: Algeria, Côte d’Ivoire, Kenya, Morocco, Nigeria, Senegal, Sudan.

37. Mr. BOYAROV (Union of Soviet Socialist Republics), speaking on behalf of the Group of Eastern European States, nominated the following candidates for the posts of Vice-President: Union of Soviet Socialist Republics, Yugoslavia.

38. Mr. KONGSIRI (Thailand), speaking on behalf of the Group of Asian States, nominated the following candidates for the posts of Vice-President: China, Islamic Republic of Iran, Japan, Malaysia, Pakistan, Philippines.

39. Mr. VETTOVAGLIA (Switzerland), speaking on behalf of the Group of Western European and other States, nominated the following candidates for the posts of Vice-President: France, Sweden, Turkey, United Kingdom, United States of America.

40. The 24 Vice-Presidents nominated by the regional groups were elected by acclamation.

(d) Credentials of delegations to the Conference

(i) Appointment of the Credentials Committee

41. The PRESIDENT said that the report of the pre-conference consultations (E/CONF.82/5, para. 11) had recommended that the Credentials Committee should have the same composition as the Credentials Committee of the General Assembly at its forty-third session, namely Bolivia, China, Luxembourg, Thailand, Togo, Trinidad and Tobago, the Union of Soviet Socialist Republics, the United States of America and Zimbabwe. Since Togo, Trinidad and Tobago and Zimbabwe were not present at the Conference, they should be replaced by three different members. Unless he heard any objection, he would take it that the Conference approved the appointment of the other six members of the Credentials Committee.

42. It was so decided.

(f) Establishment of the Committees of the Whole

43. The PRESIDENT reminded the Conference that it had adopted the recommendation in the report of the pre-conference consultations (E/CONF.82/5) that it should establish two Committees of the Whole. It had therefore disposed of agenda item 3(f).

(g) Organization of work

44. The PRESIDENT invited the Conference to adopt the recommendations in paragraphs 13 to 15 of the report of the pre-conference consultations (E/CONF.82/5).

45. It was so decided.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES OF AMERICA

46. The PRESIDENT called upon the representative of the Secretary-General to read a message from the President of the United States of America.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4)

Mr. RAMOS-GALINO (Executive Secretary) expressed satisfaction that the Conference had been convened barely four years after the initiative taken by Venezuela in the United Nations General Assembly in proposing the preparation of a new drugs convention by the Commission on Narcotic Drugs and three years after the Secretary-General of the United Nations, together with the Division of Narcotic Drugs, had been entrusted with the drafting of the text. States had been given the opportunity to comment on the original text and to propose amendments to it. Those comments and amendments had been consolidated by the Division of Narcotic Drugs and submitted to Governments for consideration. A large number of government experts had then examined them in the open-ended intergovernmental group. Subsequently, the Review Group on the draft convention had made various recommendations concerning the text and the organization of the Conference.

The result of all that work was the text of the draft convention and other proposals embodied in the report of the Review Group (E/CONF.82/3). The existence of different versions for certain sections of the text should not be regarded as an obstacle in producing the best possible text for the convention.

The true nature of drug abuse and illicit traffic was very hard to identify and it was therefore extremely difficult to decide on the best way of tackling the problem. A lot of work had been done on the subject over the past four years and it was now time to take decisions on the proposals. He was confident that the Conference would succeed in adopting a text that was both effective and universally applicable.

Since there was complete agreement on the goals to be achieved, it ought to be possible to reach agreement too on an instrument which would bring them about and thus create a society free from drug abuse and the illicit traffic. The problems of drug abuse and illicit traffic had been created by man and he was sure that they could be settled by human intervention.

The PRESIDENT invited delegations to make general statements on the draft convention.

Mr. de la GUARDIA (Argentina) said that the recent dramatic growth in the illicit traffic in narcotic drugs called for concerted action by the international community. Argentina considered planned and co-ordinated action by Governments to be essential and, at the preparatory meetings that had preceded the present Conference, had sought to improve the draft under consideration to that end. States should amend their domestic legislation as necessary to adapt it to the goal pursued. Naturally, there were fundamental principles that must be respected. Where the convention needed safeguard clauses, they should refer to national constitutions and to the basic principles of national legal systems.

In cases of illicit traffic in narcotic drugs and psychotropic substances, the convention should not subject extradition to traditional limitations and should contemplate the extradition of nationals of the requested State. Argentina also supported the provisions for forfeiture, mutual legal assistance, other forms of co-operation and controlled delivery contained in articles 3, 5, 6 and 7 of the draft. It considered that the crimes in question should in no circumstances be considered political.

An imbalance between the treatment of production, trafficking and consumption could be observed in the draft convention. In a declaration adopted in October 1988 at Punta del Este, Uruguay, the Second Summit Meeting of the Group of Eight had drawn attention to the need for a legal instrument which would enable activities in the areas of consumption, production and illicit traffic to be combated simultaneously and on an equal footing. Joint action bringing together consumer, producer and transit countries was required.

Countries with a high index of consumption had a particular responsibility to adopt effective measures to reduce illicit demand. Some of those countries were in a position to grant technical and financial assistance to countries where there was illicit production so as to help them eradicate such production, and were also able to assist transit countries.

His country's legislature was at present considering draft legislation to permit the prosecution of persons who, without having participated in drug crimes, had nevertheless co-operated in the transfer or handling of the proceeds.
of such crimes, knowing or suspecting their origin. Provision was also being made for the control of the illicit traffic in precursors and chemical products used in the manufacture of narcotic drugs.

60. Mr. BOYAROV (Union of Soviet Socialist Republics) said the Soviet Union attached the utmost importance to international measures designed to eradicate drug addiction, a social affliction which affected countries to differing degrees depending on the political, economic and historical circumstances surrounding their development. No country was completely safe from the evil. The most dangerous aspect of the phenomenon—its epidemic quality—was that more and more countries were being dragged downwards by illicit drug trafficking and millions of people were being made drug addicts. Illicit drug trafficking was a fertile ground for the rise of international criminal organizations, enabling them to amass colossal financial resources, and it encouraged violence and corruption, which greatly hampered the activities of national law enforcement agencies.

61. At the 1987 International Conference on Drug Abuse and Illicit Trafficking, representatives of 138 countries had firmly declared their political readiness to wage a battle against drug addiction and to adopt decisive national and international measures to combat illicit drug trafficking. It was now up to the Conference to put the finishing touches to a new legal foundation for that struggle by creating international machinery that would promote further the concerted struggle against illicit trafficking.

62. The Soviet Union, with its humanistic attitude to health protection, consistently advocated stringent and realistic measures for the control of narcotic drugs and psychotropic substances on both the national and international levels. At present, it was engaged in a critical analysis of the measures it had already adopted and the additional steps it might need to take. Problems relating to drug addiction were being given wide exposure in the press, a number of domestic legislative measures were being reviewed, and major efforts were being waged to expose the sources of the illicit trade in narcotics, for instance by eliminating the raw material sources for their production. Decisive action was being taken to strike at the roots of illegal transport of narcotics through Soviet territory.

63. The Soviet Union advocated the widest possible international co-operation in the struggle against illicit drug trafficking. The state of that co-operation today showed a surprisingly significant level of progress compared with the past. National boundaries had ceased to be seen as the walls of a fortress and States had begun to behave towards each other on the basis not of ideological confrontation but of common designs and interests. Peoples and countries had of necessity started to recognize their growing interdependence.

64. The numerous measures adopted in the struggle against drug addiction were attested to the fact that, through respect for one another's sovereignty and by finding political compromises in a humanistic endeavour, States could move towards solving even the most difficult problems. The international community had already done much to combat the spread of drug addiction and the adoption of the draft under consideration would help to strengthen and improve the system for co-operation in control of narcotic drugs and psychotropic substances. The convention must be sufficiently balanced to take due account of particularities in national legal, criminal justice and administrative systems and of the interests of both producer and user countries. Only in that way could universal acceptance of the convention, so essential for it to contribute effectively to the struggle against the evil of drugs, be ensured.

65. His delegation believed that if the Conference proceeded in a spirit of co-operation, maintaining a constructive approach to its task and avoiding political conflicts, it would undoubtedly be successful. It was precisely in that direction that the Soviet delegation proposed to work: it would devote all its efforts to making the best contribution it could to strengthening international co-operation in the fight against the spread of drug abuse.

66. Mr. RAO (India) recalled that the fight against the evil of narcotic drugs at the global level had started with the International Opium Convention signed at The Hague in 1912. It had continued with the adoption in 1961 of the Single Convention on Narcotic Drugs and in 1971 of the Convention on Psychotropic Substances. The preambles to the 1961 and 1971 Conventions had recognized that the use of narcotic drugs and psychotropic substances for medical and scientific purposes was indispensable and that their availability had to be ensured, but at the same time that addiction to and abuse of such substances constituted a serious evil for the individual and were fraught with social and economic danger to mankind, calling for coordinated and universal action. With changing times, however, those instruments had proved inadequate in some respects. Progress in the field of technology was making the world smaller. Drug seizures had increased phenomenally in recent decades. As that increase indicated, there had been an enormous growth in the abuse of drugs of all kinds.

67. In various developing countries there was considerable incentive to smuggle in precious metals like gold and silver, as well as consumer and luxury items. Smuggling of one commodity tended to be linked with the smuggling of other commodities, including narcotics. The smuggling of narcotics had also become linked with the smuggling of arms and with terrorism. The complexity of the problem pointed up the need for a much greater effort by the international community to fight the menace of the illicit drug traffic.

68. The drug problem had become a global problem. The illicit traffic originated in a source country to meet demand for drugs in consuming countries, and other countries were exploited for purposes of transit. He wished to emphasize the special problems faced by transit States and the need to alleviate the adverse impact of transit traffic by means of suitable provisions in the convention, particularly as many developing countries...
with a transit traffic had to divert resources from their development programmes to combat such traffic.

69. The world community was conscious of the increasing dangers posed by the illicit traffic. The 1984 Quito Declaration against Traffic in Narcotic Drugs, the 1984 New York Declaration against Drug Trafficking and the Illicit Use of Drugs and the 1985 Lima Declaration reflected the world community's concern, as did the Comprehensive Multidisciplinary Outline and the Political Declaration adopted by the International Conference on Drug Abuse and Illicit Trafficking.

70. Commendable work had been done by various bodies on the preparation of the draft now before the Conference, a draft designed to deal with all aspects of illicit traffic and in particular those not covered by existing international instruments. The world would be expecting from the Conference an instrument that would stand the test of time. He was sure that participants would pursue the common objective in a spirit of co-operation and spare no effort to complete the historic task entrusted to them. The Indian delegation would be participating in the deliberations with great dedication. India was ready to share the experience it had gained in pioneering efforts in the matter of legislation relating to preventive detention and forfeiture of property of smugglers and foreign exchange manipulators. The convention adopted should strengthen the armoury of the international community in its fight against the scourge of illicit trafficking in narcotic drugs and psychotropic substances.

71. Mr. Zurita (Venezuela) said that the traffic in drugs and psychotropic substances represented a threat to civilization. International co-operation was essential to combat that traffic, and his country's commitment to such co-operation had been reflected in the signature of cooperation agreements with a number of other countries. With regard to multilateral action, the Venezuelan delegation had taken the initiative, at the thirty-ninth session of the General Assembly, of proposing concerted action against the illicit traffic in narcotic drugs. That initiative had led ultimately to the preparation of the draft convention now under consideration by the Conference.

72. The drug problem was a complex one and a global approach to it was needed in order to ensure the adoption of an effective international instrument. Venezuela regarded the principles of absolute respect for the sovereignty and independence of States and non-intervention in their internal affairs as fundamental. At the same time international legal rules were necessary and their objective must be to establish a balance between those fundamental principles and the duties and obligations of each State as a member of the international community. The Conference must seek to formulate an instrument which would be universally acceptable and of universal application, without making distinctions between large and small or industrialized and developing countries. The convention should provide for concerted action in the utilization of resources and techniques and the exchange of experience and knowledge.

73. There were a large number of provisions in the draft for which a definitive formulation still had to be found. The finalization of the text would require a spirit of understanding and political will on the part of all countries; Venezuela, for its part, was ready to co-operate fully in meeting that challenge.

74. Mrs. Tallawy (Egypt), speaking on behalf of the African Group, said that the illicit traffic in narcotic drugs and psychotropic substances was a growing threat that crossed national frontiers and drew no distinction between developing and developed countries. It jeopardized economic development plans and undermined societies. The traffickers took advantage of scientific and technological development to devise new drugs and new smuggling techniques. The fight against the illicit traffic required a pooling of resources; the international nature of the traffic meant that domestic legislation was insufficient to cope with it. The proposed convention would reinforce international co-operation and help States to deal more effectively with traffickers by such measures as agreements to ensure the forfeiture of the proceeds of drug crimes. All the African States hoped that the Conference would succeed in adopting an effective convention in the interests of those countries suffering the effects of the drug traffic, including those African countries used as transit countries.

75. The African Group recognized the difficulty of the task, due partly to the existence of different legal systems and varying domestic laws, and believed that a flexible approach was needed to ensure a consensus. The convention should cover all stages of production, distribution and trade in narcotic drugs; it should provide for imposition of the necessary sanctions against individuals and organizations participating in the illicit traffic; and it should provide guarantees of cooperation among all States, whether they were producing, consuming or transit countries.

76. The proposed convention would complete the international legal system constituted by the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances. The African Group called on all Member States to spare no effort to enable the Conference to adopt the convention. The Conference should not be seen to have failed.

The meeting rose at 1.10 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued)

1. Mr. CLADAKIS (Greece), speaking on behalf of the European Economic Community (EEC), said that drug abuse and illicit trafficking had reached such proportions that the existence and dignity of millions of human beings were threatened, while the structure of entire population groups in a growing number of countries was endangered. The problem transcended national boundaries. While the main responsibility for action still rested with individual countries, concerted efforts by all nations, international bodies and non-governmental organizations were required, as well as intensified international co-operation at the national, regional and global levels. The members of the Community believed that the time had come for all nations to express their political will to combat the drug menace on a world-wide basis. Their determination must be at least equal to the magnitude of the problem. It was therefore gratifying to note that the international community had been able to adopt a Declaration and a Comprehensive Multidisciplinary Outline at the International Conference on Drug Abuse and Illicit Trafficking held at Vienna in June 1987.

2. Although the present task was more difficult, the 1987 consensus must be confirmed and strengthened. Every effort should be made to avoid polarization or politicization and all countries must stand firm on their previous declarations, since any retreat would hamper international co-operation. The drafting of a new convention on illicit traffic in narcotic drugs was the first test since the 1987 Conference of joint determination to stamp out the evil of drugs.

3. The Community regretted the fact that the Review Group had been unable to reach agreement on certain provisions of the draft convention. The task had not been an easy one, since different national legal systems had had to be considered and such an instrument gave rise to various concerns, including the matter of national sovereignty. Some of those concerns were already satisfactorily covered by international law, while others could be dealt with under the follow-up to the 1987 Declaration and Comprehensive Multidisciplinary Outline. None of them should be allowed to stand in the way of adoption of the new draft convention, which would supplement existing legal provisions and provide appropriate machinery for the international control of trafficking in all types of narcotic drugs and psychotropic substances. The Community believed that efforts to combat production and trafficking would be effective only if simultaneous efforts were made to reduce demand.

4. Drug abuse and illicit trafficking had become so terrible a scourge for the whole of mankind that the Community wished to appeal for wider and strengthened cooperation. It had welcomed the initiative of drafting a new convention and had participated actively in the preparatory work. He therefore called on all States to do their utmost, in a spirit of constructive compromise, to ensure the adoption of the new draft convention and to give it maximum effectiveness. For its part, the Community would do everything in its power to attain that goal, bearing in mind the need for additional efforts in the near future in the field of demand reduction, treatment and rehabilitation.

5. Mr. MATIN (Bangladesh) said that his presence at the Conference demonstrated the total commitment of the Government of Bangladesh to fighting against the destructive threat of drugs on a global basis. Despite existing conventions and all national and international efforts, hardly any place on earth was immune from drug problems. The adoption and implementation of a new draft convention called for a high degree of political will and co-ordinated endeavour in pursuit of a common objective. Each provision of the new convention should therefore be carefully studied to ensure that it would contribute to a global programme that could be effectively applied.

6. An acute problem of drug abuse had surfaced only recently in Bangladesh, where increased consumption of narcotics, particularly among students, had been observed. According to some estimates there were more than 50,000 addicts in Dhaka city alone. The most alarming feature of the problem was the growing evidence that Bangladesh was being used as a transit route for trafficking. An increased volume of narcotic drugs had been seized in recent years in ports and airports, as well as in the cities. Furthermore, a substantial amount of gold, suspected to be connected with drug trafficking, had also been confiscated.

7. As the problem developed, so had the determination of the Government and the community to face it. Under President Ershad, the authorities of Bangladesh were totally dedicated to the task of combating drug abuse and illicit trafficking. The mass media were highlighting the basic issues and several seminars and symposia had been held to inform the community of the magnitude of the problem. A high-level National Drug Resistance Committee had been formed to lay down control guidelines, inform the public and ensure treatment and rehabilitation. Another committee was concerned with co-ordination, while a special unit was being set up in the Ministry of Home Affairs to deal with drug matters. In addition, the authorities were looking into the possibility of creating
drug-related crimes.

8. The four basic laws relating to drugs in Bangladesh had been framed long before the present problem had arisen. Following widespread demands to institute the death penalty as a means of combating drug trafficking, the national parliament had adopted the 1988 Dangerous Drugs Act, which provided for penalties ranging from a minimum of seven years' imprisonment to capital punishment for drug abuse and drug offences.

9. At the regional level, the South Asian Association for Regional Co-operation (SAARC) had decided in 1985 to form a study group to examine drug-related problems in member countries. At its meeting in Dhaka in September 1986, the study group had made some important recommendations and a SAARC technical committee on the prevention of drug trafficking and drug abuse was now holding regular meetings.

10. The drug problem being global, its solution must also be global. The primary producing areas involved many countries, the routes used by traffickers stretched across the world and drug abuse was very widespread. Consequently there was no alternative to international cooperation. His delegation therefore earnestly hoped that agreement could be reached at the present Conference, leading to effective international action.

11. Mr. PAREJO GONZALEZ (Colombia) said that the new draft convention would enable mankind to defend itself from the dire threat of illicit traffic in drugs. Since all countries were aware of the evils of that traffic, which was spreading throughout the international community, he felt sure that a clear consensus would emerge. The growth in drug trafficking and abuse, associated with an unprecedented crime wave, gave grounds for alarm. The assault launched by the criminal organizations dealing in drugs was jeopardizing the stability and even the survival of the legal and social institutions of many countries, while tens of thousands of human beings, many of them young, were being killed or permanently impaired. Not long ago the voices raised in alarm had been greeted with scepticism, but today all were agreed that urgent action must be taken before the problem got out of control.

12. The drug trade must be combated on all fronts and at all stages—production, traffic and consumption. Like a cancer, it had to be totally eradicated, otherwise it would continue to proliferate. It was mistaken to believe that drugs were used solely because they were available. Demand was the decisive factor in drug trafficking. Consequently, the countries where demand was high must do everything in their power to curb consumption and thus reduce the incentive for production and trafficking. It was, however, equally mistaken to neglect the imperious need to combat drug production and trafficking. Half measures would only aggravate the problem.

13. It was particularly important to stress the urgent need to strike the drug trade at its most vulnerable point—its economics. The strength of the transnational organizations involved in that criminal activity lay in their vast resources and concerted action must be taken to weaken their economic power. In particular, the laundering of dirty money had to be prevented at all costs. The new convention must therefore provide for the most severe punishment of the financial entities that collaborated, whether directly or indirectly, with drug traffickers. That applied equally to the developed countries, in which the drug trade had established itself to take advantage of the vast market for its products and the financial facilities that were available, and to the developing countries, which had sometimes failed to perceive the damage the drug trade did to their economies, political institutions and populations.

14. So all must work together in the belief that their efforts would help to free humanity from the drug holocaust threatening it. Drug trafficking—the worst enemy of the human race—must be defeated. Unhappily it was not something external, but an evil rooted within each country's frontiers. No country was immune from its lethal effects. Colombia wished to reiterate its commitment to the struggle. It had already paid a high price but would never relax its efforts to combat the scourge of drugs.

15. Monsignor CEIRANO (Holy See) said that the Holy See was deeply concerned about the international problem of drug abuse. As Pope John Paul II had recently stated, it was one of the greatest tragedies plaguing contemporary society, striking industrialized and developing countries alike, with devastating effect on individuals, families and the social fabric. Illicit drug trafficking and its related criminal activities were a threat to every community. The fight against them was not only a technical problem, to be solved by national and international action, but also a moral one.

16. In modern society drug abuse led to the break-up of families, juvenile crime, murder and terrorist attacks. It affected thousands of young people, who were the hope for a better future. The phenomenon revealed a crisis of civilization and showed the need for improvement of the moral condition of society in general. More solidarity was needed, in particular assistance for abandoned children and juvenile drug addicts and institutions must be set up for the rehabilitation of victims. The Church was ready to be of assistance through the centres it had established.

17. The financial aspects of the problem called for comprehensive co-operation between national and international institutions, including non-governmental organizations. The Church was always ready to join in the battle, although it knew there was no quick and easy solution. Since the first step must be taken by individual States, the Holy See welcomed the new draft convention, which seemed to contain effective tools for dealing with illicit drug trafficking, namely the criminalization of drug offences at the national level, and co-operation through extradition, mutual legal assistance and harmonization of criminal sanctions at the international level, as well as the confiscation of proceeds derived from drug-related offences.

18. It was not sufficient to proclaim the existence of a political will at international conferences. The solution to
the problem lay in applying effective measures through national enforcement action. Since many States had been unable to cope with drug abuse at home, the Holy See wished to appeal to the Conference to make every effort to set up a workable system for dealing with the common enemy. The commitment of those engaged in the battle against drugs, sometimes at the risk of their lives, deserved praise and encouragement. He earnestly hoped that the Conference would translate political will into effective action, since it would ultimately be judged not by words but by results.

19. Mr. MEYER (German Democratic Republic) said that his Government had observed with increasing concern the enormous extent of the illicit traffic in, the illicit use of and the illicit demand for narcotic drugs and psychotropic substances in many countries. That development jeopardized the health and welfare of millions of people, chiefly the young. The elaboration of a new convention against the illicit traffic in narcotic drugs and psychotropic substances to supplement the existing Conventions of 1961 and 1971 would represent an effective step to counter the drug problem.

20. The draft convention under consideration by the Conference constituted a good basis for successful work. The new instrument had to be acceptable to the greatest possible number of States and it was therefore necessary for its provisions to respect the sovereignty of States and also that they should not be misused for interference in the internal affairs of States.

21. With regard to the functions which would follow from the proposed convention and which were to be exercised by the United Nations system, he considered that the existing United Nations bodies—the Commission on Narcotic Drugs, the International Narcotics Control Board and the Division of Narcotic Drugs—were the appropriate ones for the purpose as they had the necessary competence and expert knowledge. That approach was also the most economical. His delegation supported the inclusion of further necessary information in the existing reporting system.

22. The economic and social policies of the German Democratic Republic guaranteed the comprehensive development of the human personality. Those policies, combined with the socialist legal system, had resulted in the illicit traffic and drug abuse never having been a social problem in his country. In order to maintain that advantageous situation, the greatest attention had been paid to the social environment and to maintaining order and security in the lawful traffic in narcotic drugs and psychotropic substances as well as to the strict suppression of any kind of illicit activity. His country received more than 50 million visitors and transit travellers every year, most of them from countries where drug abuse was widespread and it therefore attached the greatest importance not only to effective national measures but also to international co-operation in the struggle against drug abuse and drug smuggling. The accession of his country to the 1972 Protocol amending the 1961 Single Convention on Narcotic Drugs illustrated that attitude.

23. He believed that the Conference would be successful in fulfilling its mandate if all concerned were prepared to abide by its results and to act in the spirit of the International Conference on Drug Abuse and Illicit Trafficking. The effectiveness of the new convention would also depend on the successful introduction by States into their national legal and administrative systems of the provisions of the convention and on the organizing of practical international co-operation.

24. Mr. KAZUHARA (Japan) said that during the past decade, in all parts of the world, drug abuse had developed into a menace of daunting proportions, not only for the health and welfare of individuals but also for the fundamental integrity of nations and of human society itself. A particularly alarming recent development had been the spread of AIDS among intravenous drug abusers as a result of the sharing of needles. Another danger resulted from the vast profits to be made from the illicit traffic, which induced people to commit every possible type of crime, leading to an increase in organized criminal activity that frequently crossed national borders.

25. The scale of the demand for, trafficking in and supply of drugs was growing steadily and no single State could effectively combat them. In addition to the efforts being made by individual countries, there must be united international action to ensure effective control of drugs.

26. A number of regional and international meetings had recently confirmed the political determination of countries to continue the battle against drugs. He drew attention in particular to the 1987 Vienna Conference on Drug Abuse and Illicit Trafficking, one of the results of which had been the adoption of a Declaration and a Comprehensive Multidisciplinary Outline. His delegation attached great importance to the latter text, which set forth measures to be taken at different levels with respect to all aspects of demand, supply and trafficking, as well as treatment and rehabilitation.

27. Another significant result of the 1987 Conference had been to give impetus to the completion of the draft of a new convention against illicit trafficking in narcotic drugs and psychotropic substances which had been initiated in 1984 by the Commission on Narcotic Drugs. The last stage had now been reached in the drafting of that convention. The Japanese delegation expressed its appreciation to all those who had dedicated themselves to that task.

28. Great care should be taken to avoid duplication among the various international instruments on the subject of drug traffic. In the first place the new convention must be consistent with all existing agreements, in particular the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and the 1971 Convention on Psychotropic Substances.

29. Secondly, the new convention must be universal in character and effective in curbing and preventing illicit traffic, to ensure its acceptance and implementation by as
many States as possible. Due regard should be had, however, to existing differences among countries and regions with respect to patterns of drug abuse and illicit trafficking.

30. Thirdly, every effort should be made to avoid any adverse effect on the legitimate activities of the chemical and pharmaceutical industries and those of financial institutions.

31. In conclusion, he expressed his Government's determination to spare no effort in the fight against the drug menace, to follow up what had been achieved by the 1987 Vienna Conference.

32. Mr. Al-NOWAISER (Saudi Arabia) welcomed the convening of the Conference which, in addition to considering a draft convention, would provide a valuable opportunity for delegations to consult and to exchange views on the best ways of combating the abuse of, and the illicit traffic in, drugs.

33. The delegation of Saudi Arabia would participate effectively and positively in the work of the Conference, the holding of which showed that the international community was ready to reach an agreement for the purpose of dealing with a scourge that was now affecting humanity at large. His country's co-operation in dealing with that scourge had its roots in its Islamic faith and in its appreciation of the need for international action to safeguard humanity against a menace which had its source in the decay of spiritual values. In the Islamic view, drugs were totally destructive of the mind, the spirit and the body and they were therefore totally forbidden.

34. Saudi Arabia had accordingly taken steps to subscribe to international agreements on illicit drug traffic and was co-operating with all the international institutions concerned. At the internal level, effective measures had been taken to prevent drug abuse, to combat illicit traffic in drugs and to arrange for the treatment and rehabilitation of the victims of drug abuse.

35. In view of its wish to contribute to the achievement of the objective of the Conference, his delegation would adopt a positive attitude towards the draft convention.

36. Mr. POPOV (Bulgaria) said that, having listened to so many statements delivered that day, he had decided not to read out his statement. He intended to submit it to the Secretariat with a request that it should be reflected in the record. What he especially had in mind was the Bulgarian legislation, practice and experience, because to a certain extent his country was also faced by the problems under consideration.

37. He wished, however, sincerely to congratulate the President and the officers of the Conference on their election and to say that, within the limits of its abilities, his delegation would contribute to helping the Conference achieve its goals.

38. The PRESIDENT said that the text to be submitted by the Bulgarian delegation would be circulated.

39. Mr. QIN Haasun (China) expressed his delegation's appreciation of the work done by all those who had participated in the formulation of the draft convention before the Conference. He thanked in particular the Review Group and the Division on Narcotic Drugs for their valuable contributions.

40. The Chinese Government was aware of the importance and urgency of preparing a new convention against drug abuse. The 1961 and 1971 Conventions had played an important role in strengthening the control of narcotic drugs and great efforts had been made by many countries to combat the evils of drug abuse. His Government, for its part, had taken firm measures to prohibit the illicit cultivation, production, import and export and abuse of narcotic drugs and it had co-operated with a number of countries and organizations in the control and prohibition of narcotic drugs. However, the existing instruments were proving inadequate to deal with the rampant international criminal activities involved in the illicit traffic of drugs. The new convention which the Conference was considering was in full conformity with the needs and interests of all countries and peoples of the world.

41. His delegation found the draft text before the Conference basically sound, both in its content and in its structure. It supplemented usefully and developed the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances.

42. The new convention should as far as possible establish certain common norms to be observed by all countries. Only thus could it become a powerful weapon in combating the criminal activities of the illicit traffic. However, in view of the complex nature of the issues involved in drug trafficking and the differences in legal systems, particular attention should be paid to ensuring that the provisions of the new convention were in conformity with the principle of sovereign equality set forth in the Charter of the United Nations.

43. It was necessary to recognize that countries were in different situations and confronted different problems. Due regard should therefore be had to their various interests and especially to those of the developing countries, in the strengthening of international co-operation against illicit drug traffic. In that connection, his delegation had welcomed the inspiring tendency shown in the general debate on that subject in the Third Committee of the General Assembly in 1988. It hoped that all the participants in the present Conference would work together in a spirit of mutual trust and accommodation.

44. The Chinese Government had played an active part in the various stages of the formulation of the present draft convention and it hoped that the new convention would be adopted at the earliest possible time.

45. Mr. SADR (Islamic Republic of Iran) said that in the Holy Koran man was not considered in isolation but in connection with the community in which he lived. Man was not passive in his relationship with society; his conduct forged links with it and determined his own identity. Since the actions of every individual impinged on society,
the corruption of the individual brought about the corruption of society as a whole. Drug addiction and trafficking were among the evils which threatened the survival of all humanity. The problem of addiction must be seriously addressed, because it threatened not only the lives of individuals, but the well-being of thousands of families. As well as causing corruption and delinquency, addiction could have psychological and biological consequences for future generations.

46. Drug addiction was, he believed, a result of the prevailing political and social system. The economic powers which exercised domination throughout the world by means of multinational cartels and trusts were trying to prevent individuals from thinking, and thereby to head off any challenge to their exploitative policies. For them, drug addiction was an ideal solution.

47. Unfortunately, the expansion of drug trafficking was being promoted by certain countries which claimed to defend human rights and freedoms. Drug traffickers armed with advanced weapons, such as were available to only a few countries, were entering the Islamic Republic of Iran from neighbouring countries with huge quantities of drugs, and there was evidence that such people were supported and armed by certain major Powers.

48. In the Islamic Republic of Iran, in accordance with Islamic principles, drug trafficking was held to be an inhuman act, and a campaign to prevent the risk of addiction had been launched. The cultivation of opium had been proscribed by law in the Islamic Republic of Iran since 1980. During 1988, about 42,000 kilograms of a variety of drugs had been seized, and over 35,000 drug traffickers sentenced, in a campaign of vigilance which had cost the lives of 40 members of the security forces. Considering the addicit to be a sick person, the Islamic Republic of Iran had also provided whatever facilities it could for the rehabilitation of addicts. Saving one human being, it was believed, was tantamount to saving the whole of humanity, just as the murder of one man was regarded as the murder of all mankind.

49. The Islamic Republic of Iran had signed the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances. He pledged its support for the proposed new convention against illicit traffic in narcotic drugs and psychotropic substances, and expressed the hope that the political will and insight of nations would lead to the successful eradication of drug trafficking. It must be borne in mind, however, that without strong sanctions the new convention could easily be violated if it conflicted with the immediate interests of any country. Criminal acts, contrary to the provisions of international conventions, had been committed against the Islamic Republic of Iran, owing to the lack of effective sanctions. He cited the use of chemical weapons, attacks on airliners and passenger trains, and the bombardment of nuclear power stations and residential areas.

50. In conclusion, he announced the Islamic Republic of Iran's willingness to co-operate with all countries, especially its Muslim neighbours, in seeking to eradicate drug trafficking.

51. Mr. JUSTINIANO (Bolivia) said that her country, honoured by the election of a Bolivian as President of the Conference, undertook to intensify its efforts at the national, regional and world levels to eliminate illicit traffic in drugs. Bolivia fully supported the adoption of a new international convention, as it believed a new and more effective instrument was needed to tackle the problems arising from illicit drug consumption and drug traffic. The will to launch a concerted campaign against organized international crime should be translated into universal acceptance of the principles and philosophy of the new agreement.

52. Consensus on the text of the convention was important, since its impact would be lessened if there were too many reservations to the text. The new convention must not conflict with regional agreements or national legislation; the latter must, as far as possible, be rendered compatible with the text to be adopted by the Conference. Many points of convergence in national legislation or subregional agreements were already incorporated into the draft under consideration. Reservations might, however, be formulated where the text conflicted with constitutional provisions or principles of municipal law not expressly contained in legislation, or with a nation's basic moral or cultural norms, or with national sovereignty, or where it was genuinely impossible to perform the undertakings contained in the new convention. However, such cases were relatively few.

53. Bolivia had evolved and implemented its own national strategy to combat illicit drugs trafficking. It had recently adopted a law dealing with coca and controlled substances which reflected a number of principles contained in the draft convention, and future legislation would do likewise. All the criminal activities referred to in the draft convention were covered by Bolivian law, including the laundering of funds, and the penalties provided for included imprisonment for up to 25 years. The Bolivian legislation drew a clear and necessary distinction between the producers of traditional crops and drug producers and traffickers operating on an "industrial" scale. Bolivia's strategy was to seek the support and participation of its people in overcoming organized mafias.

54. Accordingly, a national policy was being pursued of encouraging alternative development and substitution of coca cultivation, by dividing the land used for that purpose into areas of traditional cultivation for licit use, an area of transitional surplus production and an area of illicit production, and setting targets for reducing cultivation. Bolivian legislation broke new ground by linking the reduction in coca supply and cultivation with development strategies for the rural economies and populations involved. Efforts were being made to stem migration and to create regional conditions to offset the economic role of narcotics. Rural development, which was singled out in draft article 10 as a strategy for reducing narcotics cultivation, was particularly important to Bolivia. Its own strategy was based on a number of points: political co-operation in order to secure a national and social
consensus against drugs trafficking; the non-use of violence against the social groups affected by the drugs traffic, especially small farmers; co-ordinated bilateral and multilateral actions in support of the national policy; devising regional projects as an integral part of the national campaign; and efforts to achieve bilateral and multilateral co-operation to foster internal development and national security and unity.

55. The draft convention presented certain defects which would have to be remedied. It failed, in particular, to strike a proper balance between demand and supply, dealing amply with drug traffickers but hardly mentioning the problem of the consumers of drugs. The drugs problem had to be tackled from both ends; there would be little purpose in reducing the flow of narcotics if the causes of demand were left untouched, because new producers would emerge to satisfy the demands of the market. It was a sad fact that the international drug barons wielded immense power but the actual amount of the funds involved in drug traffic was not known. The cocaine traffic had been said to generate movements of thousands of millions of dollars. Efforts in Bolivia to establish the level of illegal income from drugs trafficking suggested that from $120 million to $150 million were earned by illegal exports, but little of that sum found its way to the small producers. Much effort must therefore be devoted to combating demand; if it fell, production would likewise diminish.

56. In his view the convention paid insufficient attention to the consumers and to the fact that they were often the victims of the circumstances in which they lived. Use should be made of the experience of various countries to arrive at agreements, supplementary to the convention, dealing with the problems of consumption and use. Those aspects must not be ignored, since the conduct associated with them imperilled life and property and undermined society. Such conduct must be dealt with not merely by punishment, but also by re-education and social reinsertion. The problem of the habitual consumer must be approached with understanding and humanity. It must also be remembered that substances of plant origin were not the only raw materials of narcotics; there were others of industrial origin.

57. Lastly, the new convention must also specify measures to monitor the production and marketing of precursors for the preparation of controlled substances.

58. Mr. MAYNARD (Bahamas) said that if the Conference succeeded in adopting a convention against illicit traffic in narcotic drugs and psychotropic substances the bases for international co-operation and control would be strengthened and many of the gaps in the existing international drug control régime would be closed. The international community was alarmed at the increasing incidence of illegal entry and illicit use of the territories of a number of States by international drug traffickers. The traffic caused serious health problems in the affected States, and undermined their socio-economic well-being, their national security and their relations with neighbouring States. His country believed that the absence of a strong framework to provide guidelines for bilateral and multilateral efforts in certain areas of international narcotics control, including law enforcement and mutual legal assistance, could hinder inter-State co-operation and delay effective drug control. The proposed new convention offered encouraging potential for international co-operation and for dealing with illicit drug traffickers. Much could be done to eradicate the drug scourge by curbing the profit incentive, through forfeiture of the proceeds of drug crimes and the prosecution of key operatives in the illicit drug trafficking organizations.

59. The Bahamas had a particular interest in draft article 6 bis, since illicit transit traffic had serious implications for the Bahamas and other island nations of the Caribbean. Although his country produced no narcotic drugs or psychotropic substances, it was located on the sea lanes and air routes between the source and supply centres of coca and cannabis in North America, and the major drug markets in Europe. The transit routes used by international drug traffickers had expanded to every region of the world, and there was, as yet, no provision in any international instrument to address that problem. The proposed new convention, together with the 1961 Single Convention, as amended by the 1972 Protocol, and the 1971 Convention, could do much to alleviate the limitations of States in their ability to achieve drug control objectives.

60. The Bahamas had already enacted far-reaching drug control legislation, including an Act for the forfeiture of the proceeds of drug crimes. It had also concluded bilateral agreements on mutual legal assistance in criminal matters, and was co-operating with the law enforcement agencies of a number of countries. The United Nations General Assembly had recently referred to the strengthening of multilateral co-operation as a necessary antidote to over-zealous unilateral measures to combat the drugs trade, and that was the very purpose of the present Conference. A comprehensive international instrument would reflect the concerns of all who were dedicated to controlling the illicit trade in drugs and eradicating drug abuse. Differences of opinion concerning individual articles or sections in the draft under consideration must not detract from the determination of participants to produce a strong and effective convention, and he pledged the co-operation of his country in working for the adoption of such an instrument.

61. Mr. MARTIN (International Labour Organisation) conveyed to the Conference the deep concern of the International Labour Organisation (ILO) at the devastating effects of drug abuse and illicit traffic in drugs on the lives of working people throughout the world. Only the previous week, the ILO's Governing Body had had to examine complaints by a number of international trade union confederations concerning the murder and disappearance of many trade union leaders and leaders of peasant organizations in one of its member States. Most of the atrocities had been committed by hired assassins, paid and protected by drug traffickers. The Governing Body recognized that trade unionists were not the only victims of the reign of terror, and that the root cause lay beyond the competence of the ILO. It had therefore
requested its Director-General to express to the Conference its abhorrence of the sinister forces at work, and to co-operate in every way with United Nations organs which were grappling with the problems of drug abuse and drug trafficking.

62. The ILO was well aware of the dangers posed by drug abuse to the health and welfare of individuals and to human development. Criminal activities related to drug abuse were depriving individuals of their basic human rights, including the fundamental right of freedom of association, which was essential to sustained progress. The drug barons were also exploiting the poverty endured by millions of rural workers in order to promote the cultivation of illicit crops, thereby hindering social progress.

63. The ILO was increasingly alarmed at the escalation of the problems caused by illicit trafficking and drug abuse and it would support the endeavours of the Conference and help to ensure the enforcement of the proposed convention. It was currently reviewing its potential role in mobilizing the social partners and the labour force against drug abuse. It particularly welcomed the provisions in the draft convention aimed at identifying, tracing, freezing and seizing proceeds from illicit drug trafficking. Its action could most effectively be channelled under draft article 10, since the Organisation was undertaking an extensive programme of support to integrated rural development, which could be expanded to support crop substitution or income substitution programmes. As for the reduction of demand, the specific concern of the ILO was to reduce drug problems arising specifically at the workplace. It recognized the urgency of reducing the supply of drugs, but was equally convinced of the urgency of attacking the root causes underlying demand. It would therefore make a concerted effort, through its contacts with employers' and workers' organizations, and through its technical co-operation activities, to launch public information and education campaigns to persuade people to stay drug free.

64. He assured the Conference of the full co-operation of the ILO in a United Nations system-wide effort to reduce the demand for illicit drugs and to combat the forces underlying their supply.

65. The PRESIDENT welcomed the enthusiasm and determination expressed by delegations in their opening statements. A multilateral legal instrument was undoubtedly the best means of combating the serious evil now facing the international community. In the light of the statements made, he was confident that the work of the Conference would prove successful.

The meeting rose at 5.15 p.m.

3rd plenary meeting
Thursday, 1 December 1988, at 10.55 a.m.

President: Mr. BEDREGAL-GUTIERREZ (Bolivia)

ORGANIZATIONAL AND PROCEDURAL MATTERS (agenda item 3) (continued)

(e) Appointment of members of the Drafting Committee

1. The PRESIDENT said that, in accordance with rule 49 of the rules of procedure, the General Committee proposed that the Drafting Committee should consist of the following members under the chairmanship of Mr. Rao (India), whom the Conference had appointed at its first meeting: Algeria, Australia, Botswana, Canada, China, Colombia, Czechoslovakia, Egypt, France, Ghana, Iraq, Peru, Spain, Union of Soviet Socialist Republics. It might be necessary for Algeria to be replaced, in which case the General Committee recommended that Senegal should take its place. It had also recommended that Mr. Kuraa (Egypt) should be elected as Vice-Chairman of the Committee.

2. He invited the Conference to approve the General Committee's proposal and recommendations.

3. It was so decided.

(d) Credentials of delegations to the Conference (continued)

(i) Appointment of the Credentials Committee (concluded)

4. The PRESIDENT said that the General Committee had recommended that the three members of the Credentials Committee still to be appointed by the Conference should be Botswana, Côte d'Ivoire and Jamaica. He invited the Conference to approve that recommendation.

5. It was so decided.
STATEMENT BY THE REPRESENTATIVE OF COLOMBIA

6. Mr. PAREJO GONZALEZ (Colombia) reported on an agreement reached by the Governments of Colombia and Peru on 25 November 1988 concerning the co-ordination of joint action to control illicit traffic in narcotic drugs and psychotropic substances. The agreement, elaborated in the light of the threat to humanity represented by the growing illicit traffic in those drugs and substances, mentioned the decisive efforts being made by Colombia and Peru to repress the traffic with the limited internal resources and international aid at their disposal, as well as the fact that their peoples were affected by the illicit traffic because of the existence of a vast consumer market to encourage production and marketing. The agreement added that the illicit traffic was also the root cause of problems such as terrorism, subversion and illegal arms trafficking.

7. In the agreement the two Governments reaffirmed their conviction that the only solution to the problem was for the entire international community to curb all stages in the illicit process, from production to consumption, on the basis of shared responsibility and equal participation by all. However, the traditional uses of coca, passed down from generation to generation in Andean communities, fell outside the ambit of the illicit traffic in narcotic drugs. The agreement reflected the two Governments’ political will to achieve a consensus on the matter of the illicit traffic and to work towards the adoption of the draft convention at present before the Conference.

8. The Governments had accordingly instructed their delegations to request the Conference of Plenipotentiaries to consider the following points: (i) the inclusion in the convention of definitions of the terms “drug demand” and “drug consumption”, as well as the impact of those factors on the offences which the convention contemplated; (ii) the creation of a competent body with sufficient power, granted to it by the international community, to investigate the proceeds of the illicit activities concerned; (iii) enhanced and effective inspection of exports of chemical precursors used to manufacture illicit drugs by those countries in which such precursors were manufactured or marketed; and (iv) effective control over the marketing of vessels, aircraft, arms and communications equipment, the indiscriminate sale of which contributed to the increase in illegal drug trafficking.

9. The declaration went on to point out that the success of programmes designed to eliminate illegal coca cultivation depended primarily on international co-operation which should include the provision of practical and viable replacements for coca cultivation in the form of agro-industrial crops, so as to generate proper development that would enhance the living conditions of the peasant populations of Colombia and Peru. Those co-operative measures should be paralleled by prevention, repression and rehabilitation measures in order to achieve the desired outcome. Terrorism moreover, like the illicit traffic, was a serious threat to Colombian and Peruvian development and society.

10. The declaration suggested that there should be a single agency for the entire American continent to centralize the activities of the many and overlapping bodies which now existed, under the administration of officials of the highest level from each country. The agency’s task would be to control the cultivation, production, processing, transport and consumption of narcotics and psychotropic substances and it would define appropriate policies and programmes and recommend measures for their financing and implementation. In that connection, there should be a special meeting of American ministers and officials dealing with illicit drug trafficking, open to all countries affected by the drug problem.

11. Further measures proposed in the declaration were the appointment of a joint Colombian and Peruvian commission to suggest steps for harmonizing penal legislation on the use of and illicit traffic in narcotics and psychotropic substances; a joint body to direct operations in critical frontier areas; the establishment of a joint data bank and of a joint force for policing the frontier area; and the installation of communications equipment to link the frontier police of both countries. Finally, the declaration provided for an invitation to the competent authorities of Brazil to take part in a tripartite meeting to examine the possibility of joint police action in the frontier zones within the framework of a co-ordinated policy to combat the illicit traffic.

STATEMENT BY THE DIRECTOR-GENERAL OF THE UNITED NATIONS OFFICE AT VIENNA ON WORLD AIDS DAY

12. Miss ANSTEE (Director-General, United Nations Office at Vienna) said that 1 December 1988 had been declared World AIDS Day by the Director-General of the World Health Organization (WHO) at the conclusion of the World Summit of Ministers of Health on Programmes for AIDS Prevention held in London in January 1988.

13. Since the links between drug abuse and AIDS were obvious and growing, it was appropriate that the present Conference should reflect on a disease which was a new scourge of mankind.

14. World AIDS Day was the occasion to tell everyone that the spread of AIDS could be stopped by responsible behaviour and that understanding and compassion were needed for people suffering from the disease or infected with the virus. It was also an opportunity to emphasize the global nature of the fight already under way against the epidemic. Intergovernmental and non-governmental organizations, governments and communities, groups and individuals must be encouraged to help strengthen AIDS prevention and control programmes and thus open up new channels of information about how to prevent the spread of the virus and promote support and care for people with AIDS.

15. Since 1981, when the first case had been identified, AIDS had spread at an alarming rate; now over 120,000 cases had been reported to WHO from 142 countries, and it was estimated that as many as 300,000 cases
had occurred since the beginning of the epidemic. In the next decade, at least 2 to 3 million new cases were expected.

16. All the indications were that the epidemic would continue to escalate rapidly unless effective preventive measures were taken. There was no cure for AIDS and a vaccine was not likely for at least another five years, so prevention was the key to controlling the epidemic and, in turn, that meant information and education on how to avoid transmission of the human immunodeficiency virus. It was essential for people to understand the facts about AIDS. The risk of getting it was not about who or where people were, but about what they did. Epidemiological research clearly showed that the AIDS virus was spread in only three ways: by sexual activity; in contaminated blood; and from infected mother to infant. Knowledge of how the virus spread enabled infection to be prevented—in the case of sexual activity, by responsible behaviour, and in the case of blood through the testing of donated blood and its products and the sterilization of needles and other skin-piercing instruments.

17. In certain areas, intravenous drug users had been recognized as a major factor in the spread of AIDS. In some parts of the world more than half of the cases of AIDS were among intravenous drug users and approximately three quarters of the babies infected with the AIDS virus had been born to mothers injecting drugs. Intravenous drug users transmitted the infection to their sexual partners. That was one of the principal ways in which the virus spread to the population at large.

18. For drug-addicted persons, the primary AIDS-prevention strategy must be to help them stop using drugs. As long as they were addicted they were in grave danger of becoming infected with the AIDS virus. There was clear evidence that treatment was effective in reducing illicit drug use and it could therefore help in reducing spread of the AIDS virus associated with intravenous drug use. The sad fact was that only a small proportion of intravenous drug users underwent treatment. Efforts to make it available and encourage addicted persons to seek it should be the principal strategy for the prevention of AIDS associated with intravenous drug use.

19. Efforts to combat AIDS were being mobilized on a global scale to meet a global threat. Nearly all countries had national programmes and WHO was directing and co-ordinating the Global Programme on AIDS. The United Nations General Assembly had confirmed WHO's leading role in the fight against AIDS and had urged all United Nations bodies, bilateral and multilateral agencies and non-governmental organizations to support the world-wide struggle. In that connection, she had assured the World Summit of Health Ministers that the programmes of the United Nations Office at Vienna would make their due contribution to the global AIDS strategy. A focal point and working group on AIDS had been designated in the United Nations Office and the Director of the WHO Global Programme on AIDS had been invited to Vienna to ensure the harmonious development of activities.

20. In view of the close links between drug abuse and the spread of AIDS, all drug control activities indirectly supported the struggle against the disease. That was true both of the efforts of the United Nations Fund for Drug Abuse Control and of the work of the present Conference. It should be noted that the Division of Narcotic Drugs had included prevention activities in its programme and the International Narcotics Control Board had devoted considerable attention to the problem at its 1988 meetings. The spread of the AIDS virus being predominantly the result of personal and social behaviour, the Centre for Social Development and Humanitarian Affairs was particularly interested in ensuring that its programmes contributed to the global AIDS strategy and was designing and implementing specific projects for that purpose.

21. In the absence of a medical solution to AIDS and given its critical social dimension, community resources, including the network of governmental and non-governmental organizations, had to be mobilized, as well as various private initiatives. In that area too a special project was being developed in co-operation with WHO. The extraordinary threat posed to humanity by AIDS required all bodies and individuals who had responsibility for other people to join the fight. With such commitment, there was no doubt that the war against AIDS could be won. The present Conference and the convention that it was hoped to adopt at the end of it were important reinforcements in the struggle.

22. The PRESIDENT thanked the Director-General of the United Nations Office at Vienna for her contribution to World AIDS Day.

The meeting rose at 11.40 a.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (concluded)

1. The PRESIDENT welcomed Dr. Guillermo Plazas Alcid, Minister of Justice of Colombia, and The Honourable Niranjan Thapa, State Minister for Home Affairs of Nepal.

2. Mr. PLAZAS ALCID (Colombia) spoke of the sacrifices made by his country in its efforts to combat drug trafficking. No people had paid so high a price. The victims of the diabolical trade in drugs included government ministers, members of the Supreme Court of Justice, Councillors of State, judges, army and police officials, members of the intelligence services, leading journalists, including the editor of the Bogotá daily El Espectador, and hundreds of anonymous victims, whose deaths had traumatized the nation. The horrifying spectacle of the Palace of Justice under siege had not yet been forgotten. Colombia’s bitter experience had taught the country some hard lessons. The Government and the President believed that the highest national and international priority must be given to the drug problem. The high-level membership of his country’s delegation to the Conference testified to the importance attached by Colombia to its successful outcome.

3. The illicit cultivation, production, processing, transport, supply, demand and consumption of narcotic drugs and psychotropic substances subjected human beings to the cruellest sacrifices known in modern times, and caused degrading violations of human dignity and rights. Their effects were chiefly felt by young people and by the economically and culturally weak sectors of society. The scourge of drugs was inflicted equally on poor and on rich nations. No barriers of politics, culture or religion inhibited the workings of the drug trade. The acts or omissions of States or Governments were all to some degree responsible for it. Those States and Governments which were seriously concerned to eradicate the phenomenon of drug trafficking must confront it as a single phenomenon and deal with every stage in the process, from cultivation to consumption. To apply corrective measures which distinguished between producers and consumers would be a waste of time, since supply and demand were intimately connected. To combat the illicit use of narcotic drugs and psychotropic substances, the various stages of the process should not be isolated from one another; integrated strategies must be adopted, to be implemented simultaneously in different places and within different jurisdictions. His Government firmly believed that to be the only solution. For any one country to act alone would be a fruitless expenditure of effort.

4. Since the drug problem was an eminently human one, it must be handled with great understanding and social awareness. Many factors contributed to it and it called for a wide variety of corrective measures. His country had placed special emphasis on extradition as an exceptional means of solving the drugs problem. However, despite the continuing efforts of his Government, drug-related activities in Colombia remained as intense as ever. That showed clearly that repressive measures were not sufficient in themselves. They must be accompanied by other steps as part of a coherent intergovernmental plan of action, to be vigorously pursued wherever the need arose. Wide-ranging international policies must be devised, based on a firm scientific and practical foundation and on resolute political will. The problem must be approached with proper regard to the social, economic, political and cultural factors involved. There could be no question of ignoring the situation of the growers of hallucinogenic plants, constrained by economic necessity to earn their living in that way; they must be cut off from the drug traffickers who exploited them. In countries like Colombia, the concomitant evils of terrorism, subversion and the arms trade must be brought into the picture. Moreover, an important role was played by the production and sales of chemical substances and by indiscriminate sales of the planes, ships, and other instruments of communication which enabled drug trafficking to be carried on.

5. States and Governments must act promptly and in a spirit of responsibility and human solidarity. They had both a right and a duty to defend their peoples from the material and moral damage caused by the consumption of illicit drugs. The evil must be eradicated for the sake of its existing or potential victims, and must be attacked at every stage from cultivation and production to final consumption. There could be no excuse for failure to act.

6. Mr. THAPA (Nepal) expressed his appreciation to the Secretary-General of the United Nations for the role he had played in strengthening world-wide efforts to eradicate drug abuse and illicit trafficking. He also commended the tireless activity of the members of the Commission on Narcotic Drugs and the Secretariat in preparing the draft convention, and expressed gratitude to the Government and people of Austria for their co-operation and hospitality.

7. Drug abuse and illicit trafficking formed a sophisticated and complex problem which knew no national boundaries. Because the drug trade was covert and was carried on through networks extending to many parts of the world, it presented a global threat. The welfare of millions of individuals and entire nations was at risk,
because the drug trade had the power to allure and eventually destroy people from all walks of life. Drug abuse and illicit trafficking posed a combined threat to society, damaging traditional values and ways of life as well as national economies. The accompanying crime and corruption could undermine the political stability of entire nations. Although massive quantities of illicit drugs were seized by law enforcement officials each year, the major drug networks remained immune. The convention would be a means of securing vital co-operation among national agencies in the fight against them, an activity which should be promoted at both the regional and international levels. Participation in international and regional conventions could be an effective way of tackling the problem collectively. Nepal had therefore acceded to the amended Single Convention on Narcotic Drugs, 1961.

8. It was the responsibility of all members of the international community to eradicate the problems of drug abuse and illicit trafficking, which posed a special threat to young people. This affected almost all nations of the world and created an increasingly urgent need for concerted world-wide action. Experience had shown that national efforts alone were not sufficient. The seven member countries of the South Asian Association for Regional Co-operation (SAARC) had identified drug trafficking and drug abuse as a special topic for regional co-operation. The Association had drawn up an Action Plan and had formed a Technical Committee on Prevention of Drug Trafficking and Drug Abuse.

9. Nepal was a small country, and peace was one of its overriding concerns. To avert the threat to its social stability and its younger generation, his Government had given the highest priority to the eradication of drug abuse and illicit trafficking and had initiated legislation on the subject and a number of deterrent measures. The Narcotic Drugs (Control) Act of 1973 had been amended twice in order to strengthen its provisions. Penalties for drug offenders ranged up to 20 years’ imprisonment or a fine of 2 million rupees and law enforcement had been considerably intensified. Non-governmental organizations had been encouraged to stimulate public awareness of the ill-effects of drug abuse by conducting seminars, workshops and meetings.

10. The delegation of Nepal welcomed the plenipotentiary conference as a common endeavour to solve a common problem. In its view, the new convention should supplement the 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol. Efforts should be focused on making the convention universal and acceptable to as many States as possible. He pledged his delegation’s continuing efforts to bring the convention to final completion.

The meeting rose at 11.05 a.m.

5th plenary meeting
Sunday, 18 December 1988, at 11.20 a.m.

President: Mr. BEDREGAL-GUTIERREZ (Bolivia)

ORGANIZATIONAL AND PROCEDURAL MATTERS (agenda item 3) (concluded)

(d) Credentials of delegations to the Conference (concluded)

(ii) Report of the Credentials Committee (E/CONF.82/10)

1. The PRESIDENT invited comments on the report of the Credentials Committee (E/CONF.82/10).

2. Mr. ARAIN (Pakistan) entered a formal reservation with regard to the credentials of the delegation of Afghanistan. In view of the decision on the present Kabul régime taken by the Organization of the Islamic Conference and the realities of the situation in Afghanistan, Pakistan continued to adhere to its policy of withholding recognition from that régime.

3. Mr. TIMERBAEV (Union of Soviet Socialist Republics) drew attention to the statement made by his delegation in the Credentials Committee (E/CONF.82/10, para. 7). In that statement his delegation had refuted the allegation just made by the representative of Pakistan.

4. Mr. KABBAJ (Morocco), speaking on behalf of all the States members of the League of Arab States participating in the Conference, placed on record their reservations respecting the credentials of the delegation of the Israeli entity. Those reservations arose for the following reasons. In the first place, Israel continued to defy the principles of international law and the Charter of the United Nations, and especially the many General Assembly resolutions on the subject of Palestine and the situation in the Middle East.

5. In the second place, Israel continued to occupy the West Bank and Gaza Strip and had annexed the city of Jerusalem, which it had proclaimed as its capital in violation of United Nations decisions and in particular of General Assembly resolution 35/169 of 15 December 1980, which declared null and void any measures taken by Israel.
with respect to Jerusalem after its annexation. He drew attention to the fact that the credentials of the Israeli delegation had been issued from Jerusalem in defiance of United Nations decisions.

6. In the third place, Israel continued to occupy Gaza and the West Bank and had annexed the Golan area, which belonged to Syria, in defiance of United Nations resolutions banning such annexation.

7. In the fourth place, Israel continued to perpetrate acts contrary to international law against the inhabitants of the occupied territories and to establish illegal settlements in those territories in defiance of the relevant Security Council and General Assembly resolutions. Its actions against the occupied population constituted violations of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.

8. In the fifth place, Israel had refused to implement General Assembly resolutions on the subject of self-determination in regard to the Palestinian people and on the creation of the independent State of Palestine.

9. For all those reasons, the Arab States on whose behalf he was speaking entered an express reservation regarding the credentials of the delegation of the Israeli entity. He asked that their reservation be recorded in the summary records of the Conference, since it had not been entered during the proceedings of the Credentials Committee.

10. Mr. YARDEN (Israel) said that the remarks made by the representative of Morocco were completely irrelevant to the subject of the present Conference.

11. Mr. FAKHR (Islamic Republic of Iran) said that he wished to lodge a strong protest regarding the credentials of the régime occupying Palestine. That régime was guilty of many violations of human rights and of the infringement of numerous United Nations decisions. It violated the principle of the independence and territorial integrity of Palestine and thus Article 2 of the United Nations Charter. Moreover, it had refused to implement the many General Assembly and Security Council resolutions on the situation in the occupied territories, and in particular resolution ES-9/1 adopted by the General Assembly on 5 February 1982 during its ninth emergency special session. For those reasons, that régime was not entitled to participate in a conference like the present one and its representatives should be expelled from it, just as the General Assembly had expelled the representatives of the régime of apartheid in southern Africa in November 1974.

12. Mr. YARDEN (Israel) said that the statement by the Islamic Republic of Iran, like that of Morocco, was totally irrelevant to the present Conference.

13. Mr. ALLAM (Egypt) expressed his delegation’s reservation regarding the credentials of Israel, which had been issued in the city of Jerusalem. That reservation related to the place of issue of the credentials.

14. Mr. YARDEN (Israel) said that the remark of the Egyptian delegation was not relevant to the subject of the present Conference.

15. Mr. OPOKU (Legal Adviser, Secretary of the Credentials Committee) said that, since the preparation of the Committee’s report (E/CONF.82/10), credentials had been received from seven States, which at the time when the Committee had met, had not submitted formal credentials. The names of those States would be added to the list appearing in the report. Also, the name of Hungary should be added to the list in paragraph 4(a) of the report.

16. The PRESIDENT invited the Conference to take action on the draft resolution recommended to it by the Credentials Committee (E/CONF.82/10, para. 12).

17. The resolution was adopted.

ADOPTION OF THE CONVENTION AND OF THE FINAL ACT OF THE CONFERENCE (agenda item 5)

Final Act (E/CONF.82/L.5)

18. Mrs. TALLAWY (Egypt), Rapporteur-General of the Conference, introducing the draft final act of the Conference (E/CONF.82/L.5), said that paragraphs 1 to 4 of the draft set forth the historical background of the Conference, paragraphs 5 to 12 dealt with participation in it, and paragraphs 13 to 17 described its internal structure and listed its officers. The succeeding articles dealt with the decisions of the Conference regarding its methods of work and with the adoption of the convention.

19. The spirit of compromise which had prevailed throughout the proceedings of the Conference had made it possible to reconcile conflicting positions and to produce a convention which would serve to combat the scourge of drugs. The purpose of the convention was to protect future generations from that scourge, just as the Charter of the United Nations had been signed with the aim of saving future generations from the scourge of war. She was certain that the Conference had reason to congratulate itself on the results it had achieved.

20. She wished to draw attention to two minor corrections in the draft final act. In the antepenultimate sentence of paragraph 2, the date “February 1989” should read “February 1988”. In paragraph 19, the second sentence should read: “Articles 1 to 5 and the preamble were referred to Committee I and the remaining articles to Committee II”.

21. The PRESIDENT paid tribute to the dedication and enthusiasm of the Rapporteur-General. Her competence and skill had made a major contribution to the work of the Conference.

22. Mr. van GORKOM (Netherlands) associated himself wholeheartedly with that tribute.

23. He suggested that, in paragraph 21 of the draft final act, the words “which is subject to ratification or act of formal confirmation” should be corrected to read: “which is subject to ratification, acceptance, approval or act of formal confirmation”, so as to bring the paragraph into line with the wording of article 21, paragraph 1,
of the draft convention as transmitted by Committee II
to the Drafting Committee (E/CONF.82/C.2/L.13/Add.12,
p. 18).*

24. Mr. EDWARDS (United Kingdom of Great Britain
and Northern Ireland) said that in the light of article 22,
paragraph 1, of the draft convention transmitted by
Committee II to the Drafting Committee (E/CONF.82/C.2/
L.13/Add.12, p. 18),** the opening words of paragraph 21
of the draft final act should be amended to read: "The
following Convention, which is subject to ratification,
acceptance, approval or act of final confirmation and shall
remain open for accession, was adopted by the Confer­
ence . . .".

25. Mr. LAVIÑA (Philippines) pointed out that, in the
third sentence of paragraph 19 of the draft final act, the
concluding words "which reported back to the appropriate
Committee of the Whole" should be deleted, since that
was not to be the case.

26. Mrs. TALLAWY (Egypt), Rapporteur-General of
the Conference, said that the sentence mentioned by the
Philippines representative would be corrected in the light
of later developments.

27. The PRESIDENT said that the Secretariat had in­
formed him that its legal officers concurred with the
suggestion made by the United Kingdom representative. If
there was no objection on that point, he would take it that
the Conference agreed to incorporate that alteration in the
final act.

28. It was so decided.

29. Mr. OUCHARIF (Morocco) said that it was impor­
tant to correct any defects in the Arabic version of the
final act, since one of the authentic texts of the convention
would be in Arabic. He noted that the word "depository"
in paragraph 21 of the draft final act had been incorrectly
translated; it was essential to render it by a term which
incorporated the notion of custodianship.

30. The PRESIDENT said that the text of the resolutions
before the Conference for adoption would be included in
paragraph 22 of the final act when they had been adopted.
If there were no further comments, he would take it that
the Conference adopted the draft final act (E/CONF.82/
L.5) subject to that addition, and with the United Kingdom
amendment to paragraph 21 and the corrections made by
the Rapporteur-General.

31. It was so decided.

Draft resolution on exchange of information
(E/CONF.82/L.2)

32. Mr. BAILEY (Secretary) said that Turkey should be
added to the list of sponsors of the draft resolution in

33. Mr. ARAIN (Pakistan), speaking as one of the
21 sponsors of the draft resolution on exchange of information
in document E/CONF.82/L.2, said that the International
Criminal Police Organization (ICPO/Interpol) had been
in the forefront of the fight against drugs since its
foundation in 1923. Of the one million messages it trans­
mitted each year, a significant proportion concerned drug
trafficking, and it had more than half a million files on
international criminals which were available to members
day and night. He urged participants to support the draft
resolution, which would promote the timely and efficient
exchange of crime investigation information.

34. Mr. FAKHR (Islamic Republic of Iran) endorsed the
remarks made by the previous speaker.

35. Mr. AL-SHARARDA (Jordan) said that Interpol was
of enormous assistance in facilitating the rapid exchange
of information. He called on all participants to support the
draft resolution.

36. Mr. PASHA (Bangladesh) said that his country took
an active interest in Interpol and approved the draft reso­
lution.

37. Mr. POPOV (Bulgaria) said that, while he did not
oppose the draft resolution, Bulgaria was not a member of
Interpol and consequently the resolution could not be
binding on it.

38. Mr. TIMERBAEV (Union of Soviet Socialist Re­
pub­lics) said that the previous speaker's remarks applied
to his country as well.

39. The CHAIRMAN observed that there were no ob­
jections to the draft resolution. He accordingly invited the
Conference to adopt it.

40. The draft resolution in document E/CONF.82/L.2
was adopted.

Draft resolution on the provisional application of the
convention against illicit traffic in narcotic drugs and
psychotropic substances (E/CONF.82/L.3)

41. Mr. ARAIN (Pakistan), speaking as one of the
four sponsors of the draft resolution in document E/CONF.82/
L.3, said that drug abuse was the foremost scourge of
modern civilization and must be eliminated. The inci­
dence of drug abuse was increasing geometrically, and the
sooner measures were applied to combat it, the more
people would be spared the misery of addiction. He noted
that many of the measures in the convention against illicit
traffic in narcotic drugs and psychotropic substances re­
quired action by domestic legislators, and such action took
time. The draft resolution invited States to apply the
measures in the convention provisionally in order to speed
the application of its provisions in practice.

42. Mr. OUCHARIF (Morocco) said that, while he
sympathized with the intention underlying the draft reso­
lution, he thought that to invite States to apply the conven­
vention provisionally might discourage them from actually
ratifying it. He would not refrain from joining in a consensus on the resolution, but pointed out that the phrase "to the extent that they are able to do so" was ambiguous.

43. Mr. PASHA (Bangladesh), speaking as a sponsor of the draft resolution, said that drug trafficking must be stopped. The social problems caused by drugs transcended national boundaries, and the convention would go down in history as a major international effort towards combating them. He therefore urged participants to adopt the draft resolution in order to expedite the application of the measures provided for in the convention.

44. Mr. POPOV (Bulgaria) said that the phrase "with a view to their reaffirming the invitation contained herein" in paragraph 2 of the draft was incomprehensible to him. The Economic and Social Council and the General Assembly could not become parties to the convention, and could not act on behalf of States. He wondered what purpose the phrase served.

45. Mr. JANSZ (Sri Lanka), also speaking as a sponsor of the draft resolution, said that it would not be binding on States, but simply an invitation to them to take certain action. He would not oppose the deletion of the phrase "with a view to their reaffirming the invitation contained herein".

46. Mr. PAREJO GONZALEZ (Colombia), applauded the spirit of the draft resolution and said that nothing would be better than the speedy application of the convention. However, since Colombian legislation did not allow for the provisional application of a treaty, it would be impossible for his country to implement the resolution. Nevertheless, States might expedite their procedures for ratifying the convention or pass laws to develop its provisions before it entered into force.

47. Mr. YBANEZ (Spain) endorsed the views expressed by the previous speaker.

48. Mr. LAVINIA (Philippines) said that the draft resolution would create practical problems, as the convention concerned penal matters. He supported the Colombian view that it was desirable to expedite ratification.

49. Mr. MGBKWERE (Nigeria) said that the draft resolution was well thought out and far-reaching, and he supported it. Although the resolution would not be binding, some States might nevertheless wish not to apply stop-gap measures which was what the resolution recommended. He therefore proposed that the words "if deemed necessary" should be inserted after the word "provisionally", with suitable punctuation.

50. Mr. WILKITSKI (Federal Republic of Germany) approved the draft resolution. Some provisions of the convention could be implemented without new domestic legislation and might usefully be applied on a provisional basis. He reminded the Conference that article 25 of the Vienna Convention on the Law of Treaties allowed for the provisional application of a treaty. The draft resolution was therefore acceptable as its stood, but he would not oppose a compromise proposal on the subject.

51. The PRESIDENT said that the draft resolution showed that States felt a real sense of urgency and moral obligation that the convention should be applied quickly.

52. Mr. YBANEZ (Spain) said that, while he was willing to join in any consensus that might emerge on the draft resolution, he had misgivings about the Conference recommending the provisional application of the convention before it entered into force. He would much prefer the resolution to contain a paragraph expressing the ideas voiced by the representative of Colombia.

53. The PRESIDENT said that it seemed to him that the points raised by a number of speakers might be met by acceptance of the wording proposed for paragraph 1 of the draft resolution in document E/CONF.82/L.2, which contained the phrase "to the extent that they are able to do so", and the addition to it of the words "if they deem it necessary".

54. Mr. LAVINIA (Philippines), while agreeing with the remarks made by the representative of Spain, endorsed the President's suggestion for paragraph 1 of the draft resolution. He could agree to the deletion of the final phrase of paragraph 2.

55. Mr. OUCHARIF (Morocco) objected to the use of the word "provisionally" and the clause "if they deem it necessary", which gave the impression that the measures provided in the convention would not be effective. He therefore hoped that the suggestion made by the Colombian representative about States speeding up the process of ratification of the convention would be embodied in the draft resolution.

56. Mr. PAREJO GONZALEZ (Colombia) said that his suggestion had not been for a formal amendment to the draft resolution, the spirit of which he fully endorsed. His hope was that the Secretariat would urge States to speed up the ratification process so that the convention would enter into force as soon as possible. On that understanding he could accept the President's suggestion.

57. Mrs. DZIETHAM (Cameroon) stressed the fact that her country favoured a strong, binding and effective convention that would enter into force as soon as possible. She therefore welcomed the spirit of the draft resolution, but unfortunately could not support it because Cameroon would have legal difficulties in applying the convention on a provisional basis. The entry into force of an international convention for her country was conditional on a ratification procedure that involved parliamentary authorization, ratification by the Head of State and the affixing of the State seal. She strongly supported the ideas expressed by the representative of Colombia.

58. Mr. YBANEZ (Spain) suggested that the following paragraph should be added to the draft resolution: "Urges Member States, in accordance with their domestic legislation, to ensure that the provisions of the Convention enter into force as soon as possible".

59. Mr. BAHI (Mauritania) suggested, as a compromise solution, that there should be two new paragraphs, one of
which would urge States to speed up the procedure for ratifying the convention, while the second would request them, to the extent that their domestic legislation allowed them to do so, to apply provisionally the measures provided in the convention.

60. Mr. EDWARDS (United Kingdom) said that he could accept the original wording of the draft resolution with the concluding phrase of paragraph 2 deleted. However, if a new paragraph along the lines suggested by the representative of Spain was to be added, he suggested that it should read as follows: "3. Urges States to consider becoming a Party to this Convention as soon as possible".

61. Mr. BARNETT (Jamaica) said that what had seemed at first sight a relatively simple draft resolution had become a source of confusing suggestions involving three separate elements: an appeal to States to do what they could until the convention entered into force, a call to apply measures that would place obstacles in the way of illicit trafficking in drugs and an exhortation to States to accede to the convention. The original draft resolution merely sought to have States apply the measures provided in the convention on a provisional basis until it entered into force.

62. The PRESIDENT suggested that, in the light of the discussion, the Conference might wish to adopt a draft resolution along the following lines:

"1. Urges States, to the extent that they are able to do so, to speed up the procedure for ratifying the Convention so that it enters into force as soon 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; and

3. Requests the Secretary-General to transmit this resolution to the Economic and Social Council and the General Assembly."

63. It was so decided.

Draft resolution on the 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 (E/CONF.82/L.4)

64. Mr. AGUILAR (Bolivia) said that it was fundamentally important to curb the illicit traffic in narcotic drugs and psychotropic substances in the interests of human health. His delegation therefore proposed to the Conference the adoption of a resolution, the draft of which was in document E/CONF.82/L.4, with the aim of securing the necessary financial appropriations for the United Nations agencies responsible for the control of narcotic drugs. All participants had expressed the earnest desire to see the provisions of the convention enter into force as quickly as possible. Equally essential, however, was the provision of the tools and resources to enable the United Nations and multilateral agencies concerned to act vigorously against drug traffickers.

65. The draft resolution recognized the primary role of the convention in the international fight against drugs and the functions of the multilateral agencies in implementing its provisions. Since those agencies were to be given new responsibilities, they should on no account be allowed to suffer from financial stringency. The draft resolution accordingly urged all Member States to press energetically in the United Nations for the necessary budgetary appropriations for drug control to be approved.

66. An important requirement in addition to drug control activities in the strict sense was for assistance to Governments pursuing the aims of the convention, possibly on the lines of what had been achieved by the United Nations Fund for Drug Abuse Control. There was no doubt that many countries would have major financial problems in implementing the convention, problems which could only be overcome by some form of sharing of that burden. The draft resolution in document E/CONF.82/L.4 had been designed to reflect the eagerness for the effectiveness of the convention which so many delegations had expressed so fervently during the Conference. He urged most strenuously that the draft resolution should be approved.

67. Mr. OSHIKIRI (Japan) said that he shared the views of the Bolivian delegation on the fundamental importance of the measures to be taken by Governments and agencies to combat illicit drug trafficking, and the responsibilities which that implied. In order to make the draft resolution universally acceptable and focus attention on the primary responsibility of the United Nations Secretary-General in the matter of resources allocation, he proposed the addition of the words "within existing resources," after the word "Secretary-General" in operative paragraph 1 and the replacement of the words "take appropriate steps . . . and assign the appropriate priority" by the words "call upon the Secretary-General to give appropriate priority" in operative paragraph 2.

68. Mr. POPOV (Bulgaria) proposed the insertion in the first preambular paragraph of a reference to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and to the 1971 Convention on Psychotropic Substances.

69. Mr. BAYENES (France) supported the Japanese amendment.

70. Mr. WOTAVA (Austria) welcomed the draft resolution and said that it would perform an important function in emphasizing the need to reinforce the Division of Narcotic Drugs and the International Narcotics Control Board, something which he himself had frequently advocated. It was deplorable that the activities of these bodies had been curtailed because of the present financial stringency. He therefore opposed the amendment submitted by Japan, which would seriously water down the content of the draft resolution and transmit quite the wrong message to the avaricious drug mafia.
71. Mr. WILKITZKI (Federal Republic of Germany) said that his delegation supported the draft resolution as amended by Japan.

72. Mr. PELEGRINO (Brazil) supported the proposal by Bulgaria.

73. Mr. FERRARIN (Italy) said that his delegation supported the draft resolution with the Japanese amendment to paragraph 2, but it opposed the Japanese proposal for paragraph 1, which would weaken the force of the resolution.

74. Ms. WROBLEWSKI (United States of America) said that her delegation approved the Japanese amendment to paragraph 1. The language used in paragraph 2 of the draft resolution proposed in document E/CONF.82/L.4 was well chosen and closely reflected that used by the Commission on Narcotic Drugs when calling for the allocation of more resources. She would like to suggest, as a minor amendment to paragraph 2, the insertion after the words “budgetary appropriations and” the phrase “calls upon the Secretary-General to”.

75. Mr. BARNETT (Jamaica) said that the Japanese amendment was unsatisfactory, since it appeared to absolve Member States from the obligation to provide funds for the control of illicit drug trafficking. It was no use calling on the Secretary-General to do something if he was not to be given the money to do it.

76. The PRESIDENT said that the United States proposal provided a balanced compromise which might perhaps be adopted by consensus.

77. Mrs. TALLA WY (Egypt) said that the draft resolution was a fitting and important conclusion to the labours of the past month. The Conference should not accept the amendments proposed by Japan without considering them very carefully, since they seriously undermined the purpose of the resolution. There was no doubt that existing resources were incapable of meeting existing requirements, let alone the requirements which might emerge from the application of the convention. In her view, the Conference should adopt the draft resolution without amendment by consensus, leaving those who wished to do so to make reservations to it.

78. Mr. BAEYENS (France) said that his delegation approved the amendment proposed by the United States to paragraph 2. It could not accept paragraph 1 without the Japanese amendment.

The meeting rose at 1.35 p.m.

6th plenary meeting
Monday, 19 December 1988, at 10.50 a.m.

President: Mr. BEDREGAL-GUTIERREZ (Bolivia)

ADOPTION OF THE CONVENTION AND OF THE FINAL ACT OF THE CONFERENCE (agenda item 5)

Draft resolution on 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 (E/CONF.82/L.4/Rev.1) (continued)

1. Mr. AGUILAR (Bolivia) introduced the revised draft resolution submitted by his delegation on the 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 (E/CONF.82/L.4/Rev.1) (continued)

2. The revised draft resolution took account of comments made by delegations and was the result, in particular, of discussions with the delegations of Austria, France and Japan. He believed that the text, of which he read out for the control of illicit drug trafficking. It was no use calling on the Secretary-General to do something if he was not to be given the money to do it.

3. He drew attention to the fact that a meeting of representatives of regional groups had considered a text for possible inclusion in draft resolution E/CONF.82/L.4/Rev.1 as two further operative paragraphs. That text, which he would hand to the Conference secretariat, read as follows:

“2. Urges Governments in a position to do so to consider making voluntary contributions to enable the Division of Narcotic Drugs and the Secretariat of the International Narcotics Control Board to carry out their responsibilities under the Convention.

“3. Urges further that Governments in giving effect to the provisions of article 5, paragraph 5(b)(i) of the Convention give special consideration to the United Nations as the principal intergovernmental body involved in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances.”
4. Mr. VETTOVAGLIA (Switzerland), speaking on a point of order, said that the representative of Bolivia had referred to an agreement on a text among representatives of geographical groups. He wished to point out that no such agreement had been reached, although the possibility of submission of such an amendment had been discussed.

5. Mr. EDWARDS (United Kingdom) said that his delegation had wished to intervene at the previous meeting when the Conference had considered draft resolution E/CONF.82/L.4, in order to comment on that text. He had sought repeatedly to make known his desire to comment on that draft resolution, but had not been given an opportunity to do so, a fact which his delegation viewed with concern.

6. In the absence of a written version of the text read out by the representative of Bolivia, he requested that that text be read out once again more slowly, after which he would like an opportunity to respond to it.

7. Mr. RAMOS GALLINO (Executive Secretary of the Conference) said that the text of the proposed addition to draft resolution E/CONF.82/L.4/Rev.1 would shortly be circulated.

8. Mr. POPOV (Bulgaria) recalled his delegation's proposal, which had been supported by several delegations, to insert in the first preambular paragraph of the revised draft resolution, after the words "international conventions on narcotic drugs and psychotropic substances", the words "of 1961, 1961 as amended and 1971".

9. Mr. FERRARIN (Italy) reserved the position of his delegation on the addition to the draft resolution of the paragraphs read out by the representative of Bolivia.

10. He noted that in the operative part of the revised draft resolution, the reference to the Secretary-General of the United Nations had been omitted. While not absolutely opposed to the present text, his delegation wished to propose the inclusion of a reference to the Secretary-General in the operative paragraph, which would then begin: "Urges all Member States and the Secretary-General to take appropriate steps . . . ."

11. Mr. KONGSIRI (Thailand), speaking as Chairman of the Asian Group, confirmed the statement made by the Swiss representative that the proposed addition to draft resolution E/CONF.82/L.4/Rev.1 had not been endorsed by the heads of the regional groups.

12. The PRESIDENT invited the Conference, in view of the confusion which had arisen, to defer discussion of draft resolution E/CONF.82/L.4/Rev.1 pending consultation among delegations.

Final Act (E/CONF.82/L.5) (concluded)

13. Mr. BAILEY (Secretary of the Conference) drew attention to a typographical error in paragraph 16 of document E/CONF.82/L.5, considered at the previous meeting, as a result of which the name of China had inadvertently been omitted from the list of members of the Credentials Committee. The necessary correction—together with any others that were called for—would be made in the definitive version of the final act of the Conference, which would be issued as soon as possible as document E/CONF.82/14.


14. Mr. HUGLER (German Democratic Republic), Rapporteur of Committee of the Whole I, introduced the report of the Committee, the substance of which was contained in documents E/CONF.82/C.1/L.18 and Add.1-8. There was a corrigendum to document E/CONF.82/C.1/L.18/Add.3 in Arabic, English and French, and a corrigendum to document E/CONF.82/C.1/L.18/Add.6 in English only.

15. The Conference had originally entrusted consideration of draft articles 1, 1 bis, 2, 2 bis, 3, 4, 5, 5 bis and 6 to Committee I. Later it had been decided that article 6 should be considered by Committee II and that the preamble, which had been entrusted to Committee II, should in fact be examined by Committee I.


17. Each addendum was structured in the same fashion with a first section containing the draft text before the Conference, a second section listing any formal amendments and the texts thereof, a third section reporting on the proceedings of the Committee and the decisions taken at the various meetings, and a fourth section reproducing the text of the draft article transmitted to the Drafting Committee for consideration, together with any definitions which the Committee had felt were needed.

18. Time constraints had not permitted the consideration by Committee I and Committee II of their draft reports and the report of Committee I had been transmitted directly to the Conference in document E/CONF.82/11. The report would later be consolidated in one document incorporating the various corrigenda.

19. The report of Committee I did not reflect the detail of the Committee's deliberations, which would be found in the summary records.

20. Mrs. Fernández Ochoa (Costa Rica), Rapporteur of Committee of the Whole II, said that the Committee had been established to consider articles 6 bis to 28 and the preamble. In accordance with a later decision it had also been requested to consider article 6, and the preamble had been referred to Committee I.

21. She expressed her appreciation to the Chairman of Committee II for his co-operation, and thanked the Secretariat for its effective assistance.

22. The report of Committee II was contained in documentary E/CONF.82/L.12, which referred to documents E/CONF.82/C.2/L.13 and Add.1, Add.1/Corr.1, Add.2 and 3, Add.3/Corr.1, Add.4-7, Add.7/Corr.1, Add.8, Add.8/Corr.1, Add.9-11, Add.11/Corr.1 (Spanish only), Add.12, Add.12/Corr.1 (Spanish only) and Add.13. The report merely summarized the Committee's proceedings in preparing the drafts of the articles assigned to it and its structure was identical to that of the report of Committee I. Statements made by delegations were not included in the report but were reflected in the summary records. However, at the explicit request of the delegations concerned there were some brief references in the report to the position of particular delegations on specific points.

23. She drew attention to a typographical error in the English version of document E/CONF.82/C.2/L.13/Add.13, the title of which should read "Implementation clauses". Furthermore, in paragraph 23 of that document the word "derogation" should be replaced by "non-derogation".

Report of the Drafting Committee (E/CONF.82/13)

24. Mr. Rao (India), Chairman of the Drafting Committee, said that he was proud to present to the Conference the text of the draft convention agreed upon by the Drafting Committee, entitled "United Nations convention against illicit traffic in narcotic drugs and psychotropic substances" (document E/CONF.82/13).

25. The Drafting Committee had made painstaking efforts to fulfill the mandate given to it by the Conference under rule 49 of the rules of procedure. In accordance with its mandate, it had not interfered with the substance of the texts forwarded to it by the two Committees of the Whole.

26. The Chairmen of the two Committees of the Whole had participated in a number of meetings of the Drafting Committee, which had greatly benefited from their advice.

27. Although more than half of its work had come to the Drafting Committee during the last two days, its members had done their best to ensure that the content, concept and language of the draft it had produced correctly reflected the texts transmitted to it by the two Committees of the Whole.

28. Drafting the new convention had been an exemplary and very rewarding exercise in international co-operation. The presence of the representative of the Secretary-General at a number of the Drafting Committee's meetings had acted as an inspiration to it and the Secretariat had provided admirable service to the Committee.

29. The President congratulated the Drafting Committee on the faithful discharge of its mandate. He proposed that the text of the draft convention agreed upon by the Drafting Committee, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, contained in document E/CONF.82/13, be adopted by consensus.

30. It was so decided.

31. Mr. Baeyens (France) said that his delegation had not opposed the consensus on the procedure for adoption of the text of the Convention, although it would have preferred that action to have been preceded by adoption of the preamble, of the individual articles and, finally, of the text as a whole.

32. The President observed that the Conference, according to international law and State practice, enjoyed a collective form of sovereignty, whereby it was free to decide its own procedure. The President of the Conference and the members of the General Committee had scrupulously observed the rules of procedure adopted and it was by applying them with a measure of flexibility and creativity that it had been found possible to adopt the Convention by consensus.

33. Mr. Tewari (India) said that the Convention just adopted was a comprehensive, effective and operational international instrument for combating illicit drug trafficking. It also provided the necessary control measures for certain chemicals, precursors, materials and equipment used in the manufacture of illicit drugs. One matter not covered by the Convention was the exercise of stricter control over poppy straw, which was not included among the narcotic drugs defined in the 1961 Single Convention. Poppy straw was used not only as raw material for the production of illicit crude alkaloids, but also for addictive purposes. In 1985, the International Narcotics Control Board had drawn attention to the problem of poppy straw. His delegation's view was that poppy straw should be placed under the same controls as opium.

34. Referring to article 17, paragraph 11, of the Convention, he said the safeguard provisions relating to the protection of the rights of coastal States and the exercise of their jurisdiction in the territorial sea, the contiguous zone and the exclusive economic zone had been considerably diluted. Those rights and obligations had been secured after protracted negotiations at the United Nations
Conference on the Law of the Sea. Although his delegation had joined the consensus with respect to article 17, paragraph 11, it would have preferred the wording contained in paragraph 3 of the original Secretariat draft of article 12, in DND/DCIT/Working Paper 1, which referred to the "high seas" as defined in Part VII of the United Nations Convention on the Law of the Sea. It was the understanding of his delegation that article 17 of the Convention adopted by the Conference would not be applicable to the Indian customs waters, which extended to the limit of India's contiguous zone.

35. The PRESIDENT said that, the text of the Convention having been adopted by consensus, further statements by delegations might be submitted later in writing.

36. Mr. RAMOS GALINO (Executive Secretary of the Conference) said that, if the Conference so wished, specific comments of delegations on individual articles could be made at the appropriate juncture.

37. Mr. ERNER (Turkey) said that the aim of the Convention was to provide the international community with a new global instrument, sufficiently rigorous to reach drug traffickers wherever they were. The task of elaborating it had been rendered particularly arduous by the complexity of the subject matter and the scale of the problem. The Conference had proceeded by consensus, each delegation consenting to make concessions in the interest of achieving joint measures. Although far from perfect, the text of the Convention provided ordered and effective measures against the scourge of illicit drug trafficking.

38. Mr. LAVIÑA (Philippines) said that the procedure followed in adopting the Convention had departed from that ordinarily followed at United Nations and other international conferences. It had been decided that the two Committees of the Whole should submit their work to the Drafting Committee, and that the Drafting Committee would then report directly to the Conference. The final text of the Convention had now been adopted in the form in which it had emerged from the Drafting Committee, without consideration of its separate articles by the Committees or the Conference. As a result, it had not been possible for representatives to seek necessary clarification of parts of the text. The Drafting Committee's mandate was to deal with editorial rather than substantive matters, but he would nevertheless have preferred to examine its work before the latter was endorsed in plenary meeting of the Conference.

39. The PRESIDENT said that the procedure which had been followed was valid, the Convention having been adopted by the Conference itself. The text of the Convention which had been adopted constituted in his view an outstanding achievement.

40. Count DE LA BARRE D'ERQUELLINES (Belgium) agreed with the remarks of the representative of France concerning the procedure which had been followed.

41. Mr. ASSADI (Islamic Republic of Iran) said that his delegation had joined in the consensus for adoption of the Convention. Referring to article 12 of the Convention, he reiterated his delegation's view that acetic anhydride should be transferred from Table II to Table I. He supported the proposal of Pakistan and Turkey to that effect. He considered that the words "when available" in article 16, paragraph 1, weakened the effect of the control measures for the labelling of narcotic drugs. Finally, he agreed with the remarks of the representative of India concerning the reference, in article 17, paragraph 11, to the rights and obligations of coastal States under the Convention on the Law of the Sea.

42. The PRESIDENT invited representatives to confine their remarks to comments of a general nature on the Convention. Their comments on individual articles could be made later, when an article-by-article review of the text was undertaken.

43. Mr. BARNETT (Jamaica) also found the procedure which had been followed in adopting the Convention somewhat unusual. He would have preferred a more ample opportunity to discuss the report of the Drafting Committee.

44. Referring to article 3, paragraph 7 of the Convention, he said it was Jamaica's understanding that no provision for parole and early release could derogate from the laws and practices followed by the Parties in deciding on the eligibility of prisoners for such measures. With regard to article 5, paragraph 4, it was Jamaica's understanding that the competent authorities making confiscation orders would have the standing of a court of law in respect of the substantive and procedural law to be applied. With regard to article 17, paragraph 11, it was Jamaica's understanding that the rights of the coastal State would always be taken into account in respect of the new Convention.

45. Mr. VARGAS (Nicaragua) congratulated the Conference and its Secretariat on the adoption of the Convention, which offered firm and effective solutions to the problem of drug trafficking. Illicit drug-taking was a manifestation of human misery and an evil which his Government had been energetically seeking to eliminate since the revolution in Nicaragua. On 11 August 1984, together with the Governments of Bolivia, Colombia, Ecuador, Panama, Peru and Venezuela, it had signed the Quito Declaration, which declared drug trafficking to be a crime against humanity. In the international arena, Nicaragua was co-operating with other States in combating the traffic. Success could be achieved only through a co-ordinated effort by producing, consuming and transit States, as well as by those States whose territories or institutions were used for the purpose of laundering drug traffic proceeds.

46. Mr. SORIA DÍAZ (Peru) said that the new Convention constituted a considerable step forward in relation to Conventions adopted in 1961 and 1971. The responsibility for combating drug trafficking lay with both producing and consuming countries. The illicit cultivators of the coca plant in his own country were motivated by the exorbitant demand for the product from consuming countries; their poverty was a spur to production, which was expected to bring wealth. Despite the enormous quantities
of drugs sold on the world market, however, only 3 or 4 per cent of their value found its way back to the producers. Most was concealed within the international banking system, and attempts to track it down were fruitless. Peru was now spending several hundred million dollars annually on combating illicit drug trafficking and the illicit cultivation of the coca plant. Some 114 lives had been lost during 1988 in the battle between the forces of law and order and the sophisticated gangsters who operated the drugs traffic.

47. The coca plant was grown in remote jungle areas and its cultivation was not easy to eradicate. As for the proceeds derived by the traffickers, it was the responsibility of the countries which generated the demand for drugs to trace them, and to devote the necessary resources to eliminating the traffic. The new Convention represented substantial progress towards that end. In certain difficult areas, such as the methods of bringing offenders to justice and the need to protect third parties, the measures for which it provided could be complemented by future agreements. He was particularly gratified that the Convention, in its preamble, recognized the grave problem of the involvement of children in illicit drug trafficking.

48. Mr. OSHIKIRI (Japan) congratulated the Conference for having successfully adopted the Convention. However, he associated himself with the views expressed by the French and other delegations regarding the procedure employed for adoption of the instrument and the failure first to consider its text article by article.

49. Mr. AL-ALSHEIKH (Saudi Arabia) welcomed the adoption of the Convention by consensus. He congratulated the President and the delegations for the efforts they had made to bring the Conference to a satisfactory conclusion.

50. Mr. KABBAJ (Morocco) said that the Convention was the fruit of international co-operation based on a determined aim to exterminate a dangerous scourge threatening the whole of humanity. The Convention reflected the will of States to engage in a battle against the international drug mafia. His Government had contributed and would continue to contribute to any activity directed against illicit drug trafficking. His country had already made considerable progress in developing its domestic legislation along the lines of many of the provisions of the Convention. It had also concluded bilateral agreements with other countries and with specialized agencies of the United Nations system for the same purpose.

51. Mr. AGUILAR (Bolivia) said that the adoption of the Convention was a historic step forward. A modern instrument had been produced with which to confront the common enemy. As a result of the Conference more information was available which would enable Governments to take more successful action against illicit drug trafficking. He drew attention to the fact that certain modifications of articles, for example in article 3, paragraph 2, had been made by the Drafting Committee in the form of corrections which could be interpreted as corrections of substance.

52. Mr. KOREF (Panama) expressed his pleasure at the adoption of the Convention. From the statements made at the beginning of the Conference by speakers from all parts of the world he had noted that there existed a collective will to take up the struggle against illicit drug trafficking. Each Party to the Convention had the right to decide the procedure it would follow in implementing its provisions, but political differences between countries should not weaken the struggle against drug trafficking. Drug criminals paid no attention to country, religion or flag. Panama had introduced in December 1986 legislation which embodied most of the provisions agreed to at the Conference. Steps would nevertheless be taken to bring that legislation even more closely into line with the articles of the Convention.

53. Count DE LA BARRE D'ERQUELINNES (Belgium) said that the Convention was the outcome of a great deal of work and the text adopted was a compromise between many viewpoints which had been far apart at the outset of the discussions. Delegations deserved to be congratulated for the cooperation they had shown. Since the text of the Convention was based on a compromise, no delegation would find that it reflected its views in its entirety. Nevertheless, he was sure that the provisions of the instrument would be implemented effectively and would bring to an end the social scourge of illicit drug trafficking. With reference to the Convention's provision that illegal exports could be intercepted with the consent of the Parties involved, he considered that that procedure could in no way detract from the duties of policing which all States exercised in a sovereign manner in order to maintain public order in their territories. Each sovereign State, in his view, must exercise its police functions in a free manner and should not therefore necessarily receive consent from an external Party.

54. Mr. MGBOKWERE (Nigeria) said that the Convention just adopted was a historic document. It was not, and could not, be a perfect instrument, but it reflected the political will of States to overcome the drug trafficking menace in an effective and global fashion. Nigeria imposed very severe penalties for drug offences and would have liked to have seen a Convention with even more stringent provisions.

55. Mr. IKOSSIPENTARCHOS (Greece) expressed his delegation's gratitude to all those who had contributed to the successful conclusion of the Conference. His Government would have to modify some of its domestic regulations to bring them into line with the provisions of the Convention.

56. Mr. ABDUL SAMIA (Libyan Arab Jamahiriya) congratulated all those who had worked so hard to ensure a successful outcome to the Conference. A historic event had taken place with the adoption of an instrument capable of eliminating the curse of drug trafficking once and for all.

57. Mr. AL-OZAIR (Yemen) said that the day was a historic one for all humanity. Illicit drug trafficking constituted, in some ways, a more serious danger than nuclear weapons, which would be used only in case of necessity
and with full consciousness of their dangers. Illicit drug traffickers, on the other hand, were ruthless mercenaries who encouraged the use of drugs for the worst possible purposes.

58. Mr. SOTERAS (Spain) said that his delegation was gratified at the adoption of the Convention. His Government had already modified its domestic legislation to impose more stringent penalties on drug trafficking, with the possibility of prison sentences of up to 23 years and a series of other measures intended to make life difficult for drug criminals.

59. Mr. PAREJO GONZALEZ (Colombia) expressed his delegation’s pleasure at the adoption of the Convention by consensus. Colombia would have preferred even stronger provisions but appreciated that the text produced resulted from the need to harmonize differing legal systems and viewpoints. The Convention supplemented existing instruments and constituted an excellent basis for the war against the scourge of drug trafficking. If the Parties were firmly resolved to implement the Convention, it could lead to the eradication of a terrible evil.

60. Mr. GONZALEZ ARIAS (Paraguay) said that his delegation warmly welcomed the adoption of the Convention. His country was seriously affected by transit traffic in drugs and had recently adopted new legislation dealing with most of the matters covered by the Convention.

61. Mr. SAENZ de TEJADA (Guatemala) said that Guatemala had participated in all the preparatory work for the Convention, which he was gratified had now been adopted by consensus. The earlier international instruments concerning drugs were sound but the need had been felt for a more efficient and world-wide instrument for achievement of the goal sought by all, the eradication of the evil of illicit drug trafficking. His Government was prepared to co-operate in every way possible in implementing the provisions of the Convention.

62. The PRESIDENT invited the Conference to review the text of the Convention article by article, so that delegations wishing to do so might have an opportunity to place on record their specific comments on individual provisions.

Preamble

63. There were no comments on the preamble.

Article I. Definitions

64. Mr. BAHEYENS (France) formally maintained the reservation expressed by his delegation in Committee I concerning the definition of the term “Proceeds”, and more specifically the qualification “derived from or obtained . . . indirectly . . . through . . . an offence . . . “.

65. Mr. WILKITZKI (Federal Republic of Germany) said that his delegation shared the previous speaker’s concern at the use of the term “indirectly” in that provision.

66. Ms. SAIGA (Japan) said that under the definition of the term “Proceeds”, the qualification “derived from or obtained, directly or indirectly,” could give the impression that the definition concerned not only the nature and substance of the property constituting proceeds, but also the scope of property liable to confiscation and thus subject to the provisions of article 5. Since, however, article 5, paragraph 6, specifically designated the scope of property to which the provisions of article 5 would apply, such an interpretation of the definition would clearly cause a logical incoherence between the definition and the substantive provision. To avoid such incoherence, a plausible interpretation which seemed to her delegation to be a logical consequence would be that the phrase “directly or indirectly” in the definition should be construed as meaning the manner whereby the offender obtained property constituting proceeds.

67. The definition of “Narcotic drug” in article 1 referred to “any of the substances . . . in Schedules I and II of the Single Convention on Narcotic Drugs, 1961 . . . .” In the 1961 Convention, preparations in Schedule III were excluded from those subject to strict regulation. Her delegation’s consequent understanding was that the preparations listed in Schedule III of the 1961 Convention were not to be considered as narcotic drugs for the purposes of the Convention just adopted by the Conference.

68. Mr. de la GUARDIA (Argentina) expressed his delegation’s regret that the definition of “Transit State” in the draft convention (E/CONF.82/3) had been discarded in the Convention as adopted in favour of wording which made no reference to the adverse effect on the State concerned of illicit traffic in transit through its territory. In reality, that adverse effect—reflected in particular in the costs of policing and surveillance—constituted a very considerable burden which, his delegation believed, merited acknowledgement by the international community.

69. Mr. SIBLESZ (Netherlands) asked whether it might not save the Conference’s time to agree that delegations wishing to comment on specific articles of the Convention might submit those comments in writing to the Secretariat of the Conference.

70. Following a procedural discussion in which the PRESIDENT, Mr. RAMOS-GALINO (Executive Secretary of the Conference), Mr. BARNETT (Jamaica), Mr. ABUTALIB (Saudi Arabia), Mr. BOUCETTA (Morocco), Mr. MESLOUB (Algeria) and Mr. ERNER (Turkey) took part, Mr. OPOKU (Legal Adviser) said that States wishing to enter reservations—which must be in writing—with respect to the Convention would have the opportunity of doing so at the signing ceremony, or on the occasion of ratification or of accession. The present discussion, on the other hand, was intended to enable delegations which so wished to make specific comments on various aspects, articles or elements of the Convention, the provisions of which would be discussed consecutively. Their comments would—of course—be reflected in the summary records of the meeting.
71. Mr. SIBLESZ (Netherlands) said that, during the initial stages of the Conference, his delegation had proposed amendments to articles 15, 17, 18 and 19 of the Convention with the aim of replacing the generic phrase "illicit traffic" by more specific language, such as "illicit transport".

72. To some extent, the concerns underlying those proposals had been met by the introduction in article 15 of a specific reference to "offences established in accordance with article 3, paragraph 1". On the other hand, articles 17, 18 and 19 still contained references to "illicit traffic"; in article 18, the reference was even to "illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II".

73. It was the understanding of the delegation of the Netherlands that, given the scope of those articles, the term "illicit traffic" must be understood in a limited sense, in each case taking into account the specific context. In applying those articles, therefore, reliance would have to be placed on the introductory wording of article 1, allowance being made for a contextual application of the relevant definition.

The meeting rose at 1.30 p.m.

7th plenary meeting
Monday, 19 December 1988, at 3.50 p.m.

President: Mr. BEDREGAL-GUTIÉRREZ (Bolivia)


1. The PRESIDENT invited representatives to continue to offer their comments, article by article, on the Convention which had been adopted at the preceding meeting. Comments made at the present meeting would be reflected in the summary record; unless the Conference decided otherwise, such comments should be made orally.

2. Regarding reservations and formal declarations, on the other hand, the procedure was as follows: delegations wishing to make formal declarations, reservations or other statements in connection with the signing of the Convention should submit them to the Legal Adviser in writing when they signed the Convention; such declarations, reservations or statements should be duly signed by the person authorized to sign the Convention.

Article 1. Definitions (concluded)

3. Mr. SMITH (Barbados) noted that article 1 contained no definition of "Party", which in legal terms he would define as "the State, its servants or agents or otherwise". Such a definition was crucial to the interpretation and construction of the Convention, particularly in the context of article 7, paragraph 13, concerning confidentiality. He recalled that, in the discussion of what was now article 7, paragraph 13, the view had been expressed that the word "transmit" was not sufficient and that reference should be made to a third party. The inclusion of a definition on the lines he had indicated would have ensured that there would be no misunderstanding of the meaning of the provisions on confidentiality, and it was unfortunate that representatives had not had an opportunity to make statements before the Convention was adopted.

4. The PRESIDENT said that that statement would be duly noted. He thought that there should be no controversy over the word "Party", since terms such as "Parties" and "Contracting Parties" were used in contemporary international law to mean countries which were subjects of international law.

Article 2. Scope of the Convention

5. Mr. LAVIÑA (Philippines) said that he asked to place on record that his delegation had made a constructive proposal in Committee I (see E/CONF.82/C.1/SR.29) which would have solved the issue of the participation of regional economic integration organizations in the Convention without making them Parties to the Convention. His delegation understood "Parties" to mean equal parties with balanced rights and obligations, and nowhere in the Convention—unless perhaps in article 8—were international organizations expected to exercise rights and obligations under the Convention. However, to safeguard whatever interests such organizations might have in the Convention, he had proposed the addition of the following paragraph to the former article 1 bis: "4. Nothing in this Convention shall preclude the exercise by any international economic organization of the rights and obligations conferred upon it by its charter to carry out the provisions of this Convention for and on behalf of its member States which are Parties to this Convention."

Article 3. Offences and sanctions

6. Mr. van GORKOM (Netherlands) noted that, in subparagraphs (b)(i) and (ii) and (c)(ii) of paragraph 1, the Drafting Committee had replaced the words "set forth in" by the words "established in accordance with". His delegation accepted that change on the understanding that it
did not affect the applicability of the paragraphs referred to in cases where the offender knew that property was derived from an offence or offences that might have been established and committed under the jurisdiction of a foreign State.

7. His delegation noted that the provisions of paragraph 6 covered offences established under paragraphs 1 and 2. In view of the provisions of paragraph 4(d) and paragraph 11, it was his delegation's understanding that the measure of discretionary legal powers relating to prosecution for offences established in accordance with paragraph 2 might in practice be wider than that for offences established in accordance with paragraph 1.

8. It was his delegation's understanding that the provisions in paragraphs 7 and 8 did not require the establishment of specific rules and regulations on the early release of convicted persons and on the statute of limitations in respect of offences, covered by paragraph 1, which were different from such rules and regulations in respect of other, equally serious offences. It was therefore his delegation's understanding that the relevant legislation currently in force in the Netherlands sufficiently and appropriately met the concerns expressed by the terms of those provisions.

9. Mr. AGUILAR (Bolivia) noted that, in document E/CONF.82/13, the opening words of paragraph 2 ("Subject to") appeared in the Spanish version as "Con sujición a". He thought that the wording "a reserva de" should be used, as originally agreed.

10. He would make some further statements at the time of the signing of the Final Act.

11. Mr. KAZUHARA (Japan) said that there was a discrepancy in substance between the wording adopted by Committee I and the Drafting Committee's text for subparagraphs (a)(iv) and (c)(ii) of paragraph 1. The text in document E/CONF.82/13, now adopted, referred to "materials or of substances listed in Table I and Table II", whereas the draft text adopted by Committee I in document E/CONF.82/C.1/L.18/Add.1 referred to "materials such as [the] substances listed in Schedule I and Schedule II".

12. It was his delegation's understanding that Committee I had decided on the wording "materials such as [the] substances listed in Schedule I and Schedule II" instead of the words "materials, including the substances listed . . ." in order to indicate the nature of the materials in question. The text as now adopted was unclear.

13. Since it had been understood that the Drafting Committee was not to make changes in substance, his delegation took it that there was no difference in meaning between the provisions in question in the text adopted by the Conference and the corresponding provisions that had been adopted by Committee I.

14. Mr. de la GUARDIA (Argentina), referring to paragraph 4(c), said that in his country there were no minor offences in the field in question. Consequently, his delegation was in favour of measures such as education, rehabilitation or social reintegration as alternatives to conviction or punishment; if adopted, such measures should complement conviction or punishment. The possibility of such alternative measures should be reserved solely for cases covered by paragraph 4(d).

15. Mr. WOTAVA (Austria) said it was his delegation's understanding that the provisions of subparagraphs (a)(iv) and (c)(ii) of paragraph 1 applied only to specific material and equipment used for illicit drug offences.

16. Regarding subparagraphs (b)(i) and (ii), under the Austrian legal system, "laundering" would not apply if the same person was punishable for committing the related drug offence. In his delegation's view, that reflected a basic principle of Austria's legal system and was covered by paragraph 11.

17. With regard to the measures in paragraph 8, Austria had already introduced in its domestic law rigorous provisions covering the "statute of limitations" period which applied to all types of criminal offence. His country saw no need to introduce special provisions for drug offences.

18. Mr. BABAYAN (Union of Soviet Socialist Republics) noted that paragraph 1(a)(ii) referred to the cultivation of opium poppy, coca bush or cannabis plant for the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended, but that no mention was made of the production of psychotropic substances or of the 1971 Convention. He realized that it would be difficult to amend the Convention at the present juncture, but the non-mention of psychotropic substances or of the 1971 Convention should not be taken to mean that the illicit production of psychotropic substances from the plants named was not a criminal offence. That activity should be a criminal offence under paragraph 1(a)(ii).

19. Mr. SMITH (Barbados) expressed his delegation's serious reservations concerning paragraph 8, which was at variance with the principles applied in his country. Barbados had a statute of limitations inherited from English common law which protected its nationals and all persons under its jurisdiction against injustice. In view of his country's long experience and exemplary record in the area of respect for human rights and justice, there was no need for it to extend the period of the statute of limitations for any reason whatsoever, even for the effective administration of the present Convention.

20. Mr. TEWARI (India) said that, in his delegation's view, the activities listed in paragraph 1(c)(iv) in relation to the offences considered were as serious as the offences themselves and should be given the same treatment, in line with the 1936 Convention; they should not be subject to a limiting clause. Indian national law provided the same degree of punishment for conspiracy to commit an offence, or any other activities relating to participation in or preparation for commission of an offence, as for the offence itself.
21. Mr. LAVIÑA (Philippines) said his delegation thought that article 4 should have embodied the notion of exercise of jurisdiction as well as that of establishment of jurisdiction. The notion in paragraph 1(b)(i) of jurisdiction over nationals and habitual residents in the territory of a State even when the crime was committed outside its territory was alien to some legal systems, including that of the Philippines. His delegation had strong reservations regarding that provision. For the same reason, it had strong reservations on paragraph 2(a)(ii) concerning the assumption of jurisdiction over nationals when extradition was refused, without the offence having been committed in the territory of the State in question.

22. Mr. SMITH (Barbados) said that, as his delegation understood it, paragraph 1(b) provided for cumulative rather than disparate jurisdiction. His delegation was concerned about the provisions of the article. It did not accept concurrent jurisdiction, believing that once a matter came within a country’s territorial jurisdiction, on the basis of its sovereignty and territorial integrity, no other Party should have jurisdiction. It was his delegation’s understanding that, for any other Party to have jurisdiction, the provisions of subparagraphs (i), (ii) and (iii) of paragraph 1(b) must all apply. Concurrent jurisdiction was not in the interests of the Convention and was incompatible with a country’s territorial integrity and sovereignty.

23. Mr. BOUCETTA (Morocco) said that his delegation wished to express a reservation with regard to paragraph 1(a) of article 4. The judicial authorities in Morocco had jurisdiction only when an offence had been committed by a national or in Moroccan territory, and could not establish jurisdiction merely because an offender had his habitual residence in Morocco. His delegation’s position had been explained at length in Committee I.

24. Count DE LA BARRE D’ERQUELINNES (Belgium) said that article 5 provided, inter alia, for the confiscation of proceeds or of property the value of which corresponded to that of such proceeds. In Belgian legislation, there was no provision for such confiscation by substitution, and it would have to be considered as a secondary or auxiliary penalty, due account being taken of the principle nulla poena sine lege.

25. Mr. FERRARIN (Italy) said that his delegation’s position was in line with that stated by the representative of Belgium.

26. With respect to paragraph 1(a), his delegation wished to emphasize that the two measures indicated in the subparagraph, namely confiscation of proceeds and confiscation of property the value of which corresponded to proceeds, were to be construed as alternatives, leaving those States which were not in a position to adopt both of them to fulfil their obligations pursuant to the provision by adopting either one of them.

27. With regard to paragraph 4(a), his delegation wished to stress that the two obligations provided for in subparagraphs (i) and (ii) were also to be interpreted as alternatives.

28. His delegation believed that that understanding of the provisions corresponded to the understanding that had been stated in Committee I.

29. Mr. LITZKA (Austria) said that he had some comments to make that were relevant to paragraphs 2 and 6 of article 5 and to the definitions contained in article 1. The reference to proceeds derived “directly or indirectly” in article 1 should be interpreted in a restrictive sense. Under Austrian law, identifying, tracing, seizing, freezing and confiscation of proceeds required a concrete suspicion and a connection with a certain offence. The reference to “indirectly” derived proceeds was contrary to that principle. Prosecution without sufficient suspicion against an individual was incompatible with the right to property and to protection of personal data and the principle of the presumption of innocence. Austrian legislation left decisions on those matters to independent courts of law. With reference to “identifying” and “tracing”, his delegation wished to state that the implementation of such measures could only be allowed if there was a concrete suspicion against a specific person.

30. Mr. LAVIÑA (Philippines) said, in connection with paragraph 1(a), that his delegation wished to make a strong reservation regarding the concept that would allow confiscation of proceeds derived from offences or property—any property, whether or not it related to the proceeds—as long as the value of the property corresponded to that of such proceeds. Such a concept would violate the constitutions of some States and was inconsistent with the principle of “due process”.

31. Similarly, his delegation wished to enter a reservation with regard to subparagraphs (a) and (b) of paragraph 6 and the question of the intermingling of proceeds with property acquired from legitimate sources. Property with which proceeds had been intermingled was subject to confiscation, without regard to whether the property was related or not to the proceeds, or whether it was acquired by a bona fide third party. The situation became worse when the property was indivisible and there were co-owners in good faith. That provision also represented a violation of due process. Such confiscation, no matter how desirable, was patently unconstitutional; the proposed measures were dangerous, and defeated in reality the provision in paragraph 8 on the rights of bona fide third parties.

32. Mr. OSHIKIRI (Japan), referring to paragraph 1 of article 5, said that he agreed with the interpretation that the Party was obliged under the paragraph to adopt such measures as might be necessary to enable confiscation of either proceeds or property the value of which corresponded to that of proceeds, but not both.

33. In that connection, his delegation wished to make it clear its understanding that, so far as the property liable
to confiscation pursuant to paragraph 1 was concerned, it did not fall under the jurisdiction of paragraph 6.

34. In relation to subparagraph (a)(i) of paragraph 4, it was also his understanding that a Party was allowed to fulfill the requirements of the subparagraph by extending the schemes established pursuant to paragraph 1 to the fields of international co-operation.

35. Mr. SMITH (Barbados) said that the proprietary rights of citizens in his country were guaranteed by the Constitution. The courts had jurisdiction to confiscate property directly involved in criminal activities: it would be very difficult to adopt measures which dealt with the confiscation of property not directly and integrally involved in the perpetration of a specific crime. Article 5 created problems for his country’s judicial process, despite the fact that its territory was neither the point of origin nor the destination of the traffic in drugs. His country should not be asked to compromise its position on human rights in order to facilitate the implementation of the Convention for the benefit of the industrialized countries, particularly if those countries were not prepared to make available the necessary resources for that purpose.

36. Mr. BOUCETTA (Morocco) said, in connection with subparagraph (b)(ii) of paragraph 5, that his country’s domestic law did not permit the sharing of proceeds or property deriving from illicit traffic. His delegation wished to enter a reservation with regard to the subparagraph.

37. Mr. FAKHR (Islamic Republic of Iran) said that the provisions in paragraph 5(b) were not compatible with his country’s laws.

38. Mr. AL-ALSHEIKH (Saudi Arabia) said that his delegation wished to enter a reservation with regard to paragraph 5 for the reasons indicated by the representative of Morocco.

**Article 6. Extradition**

39. Mr. DION (United States of America) said that he wished to clarify his delegation’s understanding of the meaning of paragraph 6 of the article in the light of the lengthy consultations it had held with the delegation which had first proposed the paragraph and with other delegations.

40. The paragraph referred to human rights concerns which were fully shared by his Government, but his delegation was troubled by the phrase “judicial or other competent authorities”, which was potentially ambiguous. Litigants seeking to defeat extradition might argue that the phrase required States Parties to give their judicial authorities the power to make determinations with regard to arguments against extradition based on human rights, while making it optional for them to give other branches of government such power in addition to the judicial authorities. The United States believed that interpretation to be incorrect: the phrase in question should be construed as meaning that States Parties were granted full discretion to determine for themselves, in line with their domestic law, which branch of government was responsible for making such decisions.

41. There were significant differences in the procedures used by States in order to determine whether substantive human rights concerns were raised by a request for extradition. In the case of the United States, the relevant procedural law reserved the decision for the executive branch of government, whereas in other countries that power was reserved to the judiciary or shared.

42. There had been no indication in the discussions in Committee I of any intent to require some States to bring their procedure into line with those followed by others; such an intent would be inconsistent with the spirit of article 6, and with paragraph 7 in particular. For that reason the Committee had adopted paragraph 5, which reserved the right of each State Party to determine the procedure to be followed within that State.

43. His delegation believed that paragraph 6 did not have the effect of altering the procedural law of the United States in regard to extradition.

44. The language used in the paragraph had its origin in the United Nations Convention on the Status of Refugees, but under that Convention human rights concerns were not to result in the granting of refugee status if the person concerned had been accused of a serious offence in his home country—the exact situation that would exist when a State Party sought the extradition of a trafficker under the present Convention. It would be ironic if paragraph 6 were inadvertently to grant drug traffickers more protection than innocent refugees.

45. Mr. de la GUARDIA (Argentina) said that in the earlier stages of negotiations his delegation had argued that the nationality of the offender should not serve in any way as an obstacle to extradition. However, to its regret, that approach had not been adopted in the final draft.

46. Mr. VALL (Mauritania) said that in the meetings of Committee I his delegation had sought to harmonize the terminology used in paragraph 12 of article 6 with that of other relevant international instruments. However, he did not consider the present meeting to be the appropriate time to express his delegation’s reservations as to the wording finally adopted.

47. Mr. BAELYENS (France) said that he wished to stress that the provisions in subparagraphs (a) and (b) of paragraph 9 should not in any way be interpreted as derogating from the criminal jurisdiction of the requested State in conformity with its domestic law.

48. Mr. LAVIÑA (Philippines) said that his delegation wished to enter reservations on paragraph 9, based on its objections to the notion of assumption of jurisdiction over nationals even where the offence was not committed in the territory of a State purporting to exercise jurisdiction.

49. Similarly it reserved its position on the qualifying clauses “unless otherwise agreed with the requesting Party” in paragraph 9(a) and “unless otherwise requested
by the requesting Party" in paragraph 9(b), the effect of which would be to defeat the exercise by a sovereign State of the power to prosecute under its own internal law.

50. Paragraph 10 introduced a principle which was not generally accepted in international law, and its inclusion had been decided on the basis of a by no means overwhelming majority vote: he regretted that there had been no opportunity to raise the issue in the plenary and to ascertain whether the text enjoyed the support of a two-thirds majority.

51. Mrs. KATHREIN (Austria) said that she wished to reiterate her delegation’s understanding with regard to subparagraphs (a) and (b) of paragraph 9. The provisions concerned should not be interpreted as prejudicing the exercise of criminal jurisdiction under domestic law even when the requesting State had expressed its opposition to the exercise of that jurisdiction.

Article 7. Mutual legal assistance

52. Mr. SMITH (Barbados) recalled the statement he had made earlier in the meeting on article 1. In the discussions in Committee I on the former article 5 (see E/CONF.82/C.1/ISR.31), he had taken the view that the Jamaican amendment in document E/CONF.82/C.1/L.35, on the question of confidentiality, was not necessary, but he had taken that view on the assumption that the wording "not transmit to any third party" was to be used in what was now paragraph 13 and, moreover, that "Party" would be defined as "the State, its servants or agents or otherwise". Those provisions had not been included in the final draft approved and, under the procedure adopted, his delegation had not had the opportunity to object. His delegation understood article 7 as including the provision which it had assumed had been adopted.

53. He wished to express his delegation’s and his Government's regret that the article did not include a provision that a Party should not withhold relevant information to another Party that was important, relevant and necessary with reference to any of the offences set out under article 3, paragraph 1.

54. His delegation hoped that countries with superior intelligence agencies would provide small countries like Barbados with all the information needed to put the Convention into effect.

55. Mr. MADDEN (Jamaica) said that his delegation felt that the issue of confidentiality had not been duly covered by article 7. Its understanding was that a State would not be in breach of the Convention if it refused to hand over information that it considered highly confidential unless the requesting State guaranteed not to disclose it.

Article 8. Transfer of proceedings

56. There were no comments on article 8.

Article 9. Other forms of co-operation and training

57. Mr. EDWARDS (United Kingdom) said that his delegation wished to put on record its view that, under the Convention, the relevant authorities in territories for whose international relations a State Party was responsible should participate fully in the co-operation provided for in article 9. It took the same view in relation to the other articles of the Convention which dealt with co-operation.

58. Mr. BAHEYENS (France) said that his delegation wished to stress that the "bilateral or multilateral agreements or arrangements" mentioned in paragraph 1 might also be informal.

59. Mr. DION (United States of America) said that the word "concerning" in the introductory part of paragraph 1(b) could be misinterpreted. The text adopted by Committee II (see article 6 in paragraph 32 of document E/CONF.82/C.2/L.13/Add.8) had provided for the conduct of inquiries involving offences covered by article 3, paragraph 1, as well as for the separate conduct of inquiries with respect to the items now marked (i), (ii) and (iii). The placement of the word "concerning" in the text in document E/CONF.82/13 could be read to make the conduct of inquiries with respect to matters in items (i), (ii) and (iii) conditional on the existence of a discrete offence contrary to article 3, paragraph 1, which his delegation did not believe had been the intention of Committee II. The ideal solution might have been to number as (i) the words in the introductory part starting with "offences established in accordance with . . ." and to renumber the others accordingly. His delegation wished the record to show that, in its view, the word "concerning" should be interpreted in that way.

60. Mr. TEWARI (India), referring to paragraph 1(a), said that his delegation would have liked the addition, after the words "links with other criminal activities", of a reference to economic crimes, including customs and commercial frauds.

Article 10. International co-operation and assistance for transit States

61. Mr. SEARS (Bahamas) said that his delegation welcomed the inclusion of article 10, which sought to address the concerns of transit States. Countries were used as transit States because of geography or to suit the convenience of traffickers, and it was his delegation's view that the demand markets should bear a proportionate share of the burden of drug interdiction.

62. Mr. VILLALOZ (Panama) said that his delegation was pleased to see the inclusion of such a provision in the Convention. His country's situation, with an international waterway, made it especially appreciative of international co-operation in drug control.
Article 11. Controlled delivery

63. Count DE LA BARRE D'ERQUELINNES (Belgium) said that his delegation understood the phrase "with the consent of the Parties concerned" in paragraph 3 as being without prejudice to independent measures to punish offences on national territory and to maintain public order.

Article 12. Substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

64. Mrs. SAIGA (Japan), referring to the provisions of article 12 as well as those of articles 13-16, said that her Government, with the understanding that had been agreed upon during the deliberations of Committee II, would implement the provisions in question in the most appropriate and effective way in accordance with Japan's legal and administrative system.

Article 13. Materials and equipment

Article 14. Measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances

65. There were no comments on articles 13 and 14.

Article 15. Commercial carriers

66. Mr. DION (United States of America) said that, during the third meeting of Committee II, his delegation had asked that the record of the Committee should contain the conclusion of the October 1987 Expert Group to the effect that the Parties could apply to any carrier, in an appropriate case, the measures envisaged under both subparagraph (a) and subparagraph (b) of paragraph 2 (see document E/CN.7/1988/2 (Part II), para. 218). It also wished that conclusion to be duly noted in the record of the plenary.

Article 16. Commercial documents and labelling of exports

67. There were no comments on article 16.

Article 17. Illicit traffic by sea

68. Mr. AL-MUBARAKI (Kuwait) said that his delegation had joined in the consensus on article 17 despite its apprehensions regarding the inclusion of paragraphs 3 and 4 thereof. The text in document E/CONF.82/13 contained safeguards which allayed his delegation's apprehensions.

69. It was pleased to see reference to the international law of the sea, the provisions of which should not be violated.

70. His delegation was satisfied with the various provisions in paragraphs 5, 7 and 11. The provisions in paragraphs 3 and 4 should be implemented in keeping with the Convention in all good faith.

71. Mr. GONZALEZ (Cuba) said that his delegation had difficulties with paragraph 4 of the article, particularly subparagraphs (a) and (b). The measures provided for would be seriously prejudicial to international maritime trade and jeopardize the safety of navigation.

72. His delegation felt that the guarantees set out in paragraph 5 did not remove the problems raised by paragraph 4.

73. Mr. SABOIA (Brazil) said it was his Government's understanding that article 17, paragraph 11, did not prevent a coastal State from requiring prior authorization for any action under the article by other States in its exclusive economic zone.

74. Mr. WILKITZKI (Federal Republic of Germany), referring to paragraph 6 of article 17, said that, in the view of his delegation, a condition mutually agreed between Parties under paragraph 6 could be the payment of compensation for any damage due to unjustified measures, and that such a condition, as a matter of principle, was consistent with the obligations of co-operation in paragraph 1.

75. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation fully supported the thrust of article 17 and the aim of increasing the effectiveness of control of illicit traffic by sea. It wished to stress that none of the paragraphs of the article could be understood or interpreted as prejudicing the principle of free navigation outside territorial waters, as confirmed in the United Nations Convention on the Law of the Sea. No action could be undertaken in respect of ships exercising freedom of navigation without the express consent of the flag State, and the flag State was fully entitled to condition its agreement to the existence of a corresponding agreement or arrangement.

76. Mr. de la GUARDIA (Argentina) said that his delegation was satisfied with the compromise solution adopted concerning article 17.

77. He hoped that steps would be taken to ensure that the terminology in the final Spanish version was correct.

78. Mr. STEWART (United States of America) said that article 17, paragraph 6, should be understood in the light of actual international experience and practice and the duty to co-operate to the fullest extent possible in drug interdiction. Fulfilment of that duty in good faith and consistently with the object and purpose of the Convention would preclude the imposition of unreasonable, unnecessary or extraneous conditions.

79. The United States understood that "the international law of the sea" to which reference was made throughout article 17 was the customary law reflected in the navigational articles of the 1982 United Nations Convention on the Law of the Sea.
80. With regard to illicit trafficking by sea, article 17, paragraph 11, referred to the limited set of situations in which a coastal State had rights beyond the outer limit of the territorial sea: those involving hot pursuit in the exclusive economic zone and on the high seas and the exercise of contiguous zone jurisdiction. The paragraph did not imply endorsement of any broader coastal State claims regarding illicit traffic interdiction in the exclusive economic zone (EEZ). His delegation viewed paragraph 11 as a straightforward non-derogation clause, intended to preserve and not to affect in any way, existing rights and obligations under international law. During the negotiations that had taken place, a majority of delegations had taken the position that coastal State consent was not necessary under the international law of the sea for foreign flag law enforcement beyond the coastal State’s territorial sea. The attempt to secure a broader coastal State right or claim to sovereignty in the exclusive economic zone had failed during negotiation of the 1982 Law of the Sea Convention, and that result had not been altered.

81. Mr. van GORKOM (Netherlands) said that it was his delegation’s understanding of article 17 that the reference in paragraph 3 to “a vessel exercising freedom of navigation” should be taken to mean a vessel navigating beyond the external limits of the territorial sea. The safeguard clause contained in paragraph 11 of the article was aimed at safeguarding the rights and obligations of coastal States within the contiguous zone and their rights under the hot pursuit principle. To the extent that vessels navigating in the contiguous zone acted in contravention of the coastal State’s customs and other regulations, the coastal State was entitled to exercise, in accordance with the relevant rules of the international law of the sea, jurisdiction to prevent and/or punish such contraventions. His delegation fully endorsed the views of the United States delegation.

82. Mr. SAMIA (Libyan Arab Jamahiriya) said that his delegation had raised a question and made a statement on article 17 in Committee II, which would be reflected in the summary records of that Committee in due course. He accordingly wished merely to reaffirm the statement made by his delegation in Committee II and stress the importance of the principle of good faith in the implementation of the provisions of the Convention.

83. Mr. EDWARDS (United Kingdom) said that his delegation fully supported the views expressed by the representative of the Netherlands. At the same time he wished to draw attention to the very limited nature of the obligations established under article 17, paragraph 11, and in particular to the use of the words “take due account”.

84. Mr. VALL (Mauritania) said that, since the summary records of the proceedings in Committee II were not yet available, he wished to reiterate his delegation’s position on paragraph 11. Developing coastal States experienced great difficulty in ensuring full control over the areas of sea under their responsibility. It was necessary to make sure that the prerogatives of coastal States were properly recognized. In his delegation’s understanding, the Convention would be applied without prejudice to the rights of coastal States in territorial waters, their prerogatives and in the contiguous zone and the exclusive economic zone under the international law of the sea, as defined by the Convention on the Law of the Sea.

85. Mr. FERRARIN (Italy) said that his delegation fully endorsed the views of the United States, the Netherlands and the United Kingdom in regard to the interpretation to be placed on article 17.

Article 18. Free trade zones and free ports

Article 19. The use of the mails

Article 20. Information to be furnished by the Parties

Article 21. Functions of the Commission

86. There were no comments on articles 18-21.

Article 22. Functions of the Board

87. Mr. EDWARDS (United Kingdom) said that, although varying interpretations might perhaps be put on the text, it was clear to his delegation that article 22 must be interpreted in such a way that the powers and functions of the Board under the 1961 Single Convention and the 1971 Convention on Psychotropic Substances were not impaired, as indeed followed from other provisions of the Convention and its preamble. It was to be noted that under the 1961 and 1971 Conventions the competence of the Board was very wide, extending to both licit and illicit traffic and dealing with, for example, penal and extradition matters. Accordingly, such matters remained within the competence of the Board. That interpretation was confirmed by the fact that it was only in that way that the Convention could be the strong and effective instrument against illicit drug trafficking which all delegations had stated that they were seeking—an aim reaffirmed in the preamble to the Convention.

88. Mr. TEWARI (India) said that the reference in the introductory part of paragraph 1 of article 22 to the functions of the Board under the 1961 Convention as amended had caused his delegation some difficulty. The Board’s excessive powers under article 14 of the 1961 Convention as amended by article 6 of the 1972 Protocol were not acceptable to India, since they had the effect of encroaching on the sovereignty and internal affairs of a State Party.

89. India had made a reservation in regard to article 6 of the 1972 Protocol. He wished to place his delegation’s position on record.

90. Mr. BABAYAN (Union of Soviet Socialist Republics) said that long experience in the implementation of the 1961 and 1971 Conventions had amply demonstrated the value of the work done by the Commission and the Board, whose powers had been suitably strengthened in the present Convention. In his view, articles 21 and 22 defined the powers and competence of the Commission and the Board very well. The two bodies were closely interlinked and had always worked together in the greatest harmony.
Article 23. Reports of the Board

91. There were no comments on article 23.

Article 24. Application of stricter measures than those required by this Convention

92. Mr. de la GUARDIA (Argentina) said that the Spanish version should be checked.

Article 25. Non-derogation from earlier treaty rights and obligations

93. There were no comments on article 25.

Article 26. Signature

94. Mr. STEWART (United States of America) said that, when the draft final clauses had been discussed in Committee II, his delegation had made a statement in connection with the reference to the Council for Namibia in those articles. It was unfortunate and unnecessary to allow the Council for Namibia, an entity which was not capable of assuming the rights or carrying out the obligations of the Convention, to sign it and accede to it. His country was hopeful that efforts to bring about Namibian independence in accordance with Security Council resolution 435 would soon bear fruit. It would welcome Namibia's signature of and accession to the Convention when independence was achieved.

95. Mr. LAVIÑA (Philippines) said that his delegation would have preferred accession to the Convention to be restricted to States Members of the United Nations, members of the specialized agencies and the International Atomic Energy Agency (IAEA) and those invited by the Economic and Social Council. That would have obviated the difficult task of determining which entities constituted States and which did not. As had been pointed out, the Convention was effectively outside the purview of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, since the latter was not yet in force, and also that of the 1969 Vienna Convention on the Law of Treaties, since that Convention regulated only the mutual relations of States and not their relations with international organizations. His delegation would submit the text of its statement to the Secretariat.

96. Mr. MADDEN (Jamaica) said that his delegation wished to reiterate, for the record, the statement it had made in Committee II (see E/CONF.82/C.2/SR.30, para. 31) concerning the capacity of regional economic integration organizations to participate in the Convention in the way set out in various articles, and particularly in what was now article 26.

97. Mrs. MOLOKWU (Nigeria), referring to the words "regional economic integration organizations", noted that it had been agreed during the deliberations in Committee II that that phrase should be expanded to include subregional economic integration organizations also.

Article 27. Ratification, acceptance, approval or act of formal confirmation

Article 28. Accession

98. There were no comments on articles 27 and 28.

Article 29. Entry into force

99. Mr. MADDEN (Jamaica) said that his delegation would have preferred entry into force to follow the thirtieth rather than the twentieth ratification.

Article 30. Denunciation

Article 31. Amendment

Article 32. Settlement of disputes

Article 33. Authentic texts

Article 34. Depositary

100. There were no comments on articles 30-34.

Absence of an article concerning reservations

101. Mr. de la GUARDIA (Argentina) said that, without an article concerning reservations, the Convention remained open to all sorts of reservations provided that they did not run counter to the aims of the Convention. His delegation would have liked to see an article dealing with reservations, if only in regard to the basic articles of the Convention.

102. Mr. STEWART (United States of America) said that his statement related to the term "reservations" in the formal sense in which that term was used in the 1969 Vienna Convention on the Law of Treaties. When Committee II had adopted the recommendation of the Working Group to delete any article on reservations, the United States delegation had made a statement on the subject of reservations to multilateral conventions. It had stated that the United States would apply severe scrutiny to any reservation proposed by a signatory to the Convention in the light of the inadmissibility under international law of reservations to a multilateral convention that ran contrary to its object and purpose. In his delegation's view, a reservation to any of a great number of the provisions of the Convention would raise serious questions concerning its effect on the object and purpose of the Convention, which was aimed at creating a uniform common denominator for all States Parties with respect to the measures they were obligated to take so as to co-operate more effectively in the fight against illicit trafficking.

103. Mr. LAVIÑA (Philippines) said that there had been general agreement, during the discussion in Committee II on the inclusion of a reservation article, that the
Convention would in fact be governed by the 1969 Vienna Convention on the Law of Treaties. Those who had spoken had favoured the inclusion of some article on reservations. Given the general desire for a strong convention to combat illicit traffic in drugs, his delegation’s preference had been for a reservation article excluding the possibility of reservations. Since, as he had pointed out, neither the 1969 Vienna Convention nor the 1986 Vienna Convention applied to the present Convention, the question of reservations had in fact been left wide open. In their zeal to complete the proceedings on time, participants had now opened the way for discussion of almost all the articles which had been agreed on.

104. His delegation submitted a strong and unqualified reservation in respect to the absence of any reservation article in the Convention.

105. Mr. KAZUHARA (Japan) said that, without wishing to reopen issues which had already been discussed both in Committee II and in the Working Group, his delegation felt bound to make its position clear. It would be quite wrong to put obstacles in the way of States acceding to a convention aimed at preventing illicit traffic in narcotic drugs by prohibiting the submission of reservations. His delegation would accordingly have preferred the inclusion of a reservations article in the Convention. On the basis of the understanding which had been reached in Committee II that reservation would be subject to international law, especially the 1969 Vienna Convention on the Law of Treaties, his delegation had accepted the consensus decision that no such article would be included in the Convention. Nevertheless, the fact that the Convention contained no reservation clause should not be held to imply that it was automatically open to all sorts of reservations.

The meeting rose at 6.35 p.m.

8th plenary meeting

Monday, 19 December 1988, at 7.35 p.m.

President: Mr. BEDREGAL-GUTIERREZ (Bolivia)


Absence of an article concerning reservations (concluded)

1. The PRESIDENT invited the Conference to continue its comments on the absence of an article concerning reservations in the Convention.

2. Mr. VALL (Mauritania) said that his delegation’s interpretation of the international law in force in the matter of reservations was that each Party to a convention could enter reservations at the time of ratifying it.

3. Mr. ASBALI (Libyan Arab Jamahiriya) said that the question of the absence of a reservations clause had been discussed in Committee II, and the understanding had been that that absence did not preclude States from entering reservations at the time of signing or ratifying the Convention. So far as his own delegation was concerned, it would have preferred the inclusion in the Convention of a provision stating clearly that States Parties were entitled to enter reservations in accordance with international law.

4. In any event, the absence of a reservations clause did not deny the right of States to make reservations.

5. Mr. BARNETT (Jamaica) said it was the understanding of his delegation that whether or not a reservation to any part of the Convention was contrary to its aims and/or principles could not be determined by any one State Party.

6. Mr. AL-OZAIR (Yemen) paid tribute to all those whose efforts had made possible the adoption of the Convention. His delegation considered that the Convention should be made as effective as possible, and that it was therefore essential to encourage States to become Parties to it. It was unfortunate that the article on reservations originally proposed had been eliminated, because its absence would make some States hesitate to sign the Convention. That view of the delegation of Yemen was shared by many other delegations.

7. His delegation reserved its country’s right to enter reservations to any article of the Convention.

Annex to the Convention

8. The PRESIDENT noted that there were no comments on the annex and declared the review process closed.
Adoption of the reports of Committee I, Committee II and the Drafting Committee

9. The PRESIDENT said that the Conference should formally adopt the reports of Committee I, Committee II and the Drafting Committee. If he heard no objection, he would take it that the Conference agreed to adopt those reports.

10. It was so decided.

Draft resolution on 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 (E/CONF.82/L.4/Rev.1) (concluded)

11. The PRESIDENT invited the Conference to resume consideration of the draft resolution.

12. Mr. BAILEY (Secretary of the Conference) informed the meeting that it was suggested that the opening words of the first preambular paragraph should be revised to read: "Recognizing that 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, remain the basis . . . ".

13. It was further suggested that, in the operative part of the draft resolution, a reference to the Secretary-General should be introduced.

14. Mr. AGUILAR (Bolivia) thanked the various delegations which had made suggestions and contributions aimed at a compromise formulation; however, it had proved difficult to incorporate the suggested amendments in a text capable of attracting a consensus.

15. Pressure of time had doubtless been responsible for the confusion that had arisen with regard to the meaning of the draft submitted by his delegation in document E/CONF.82/L.4/Rev.1 and the question of the consultations that had taken place with the regional groups.

16. Mr. van GORKOM (Netherlands) said that his delegation was grateful to the Bolivian delegation for its draft resolution. It was essential to strengthen the Division of Narcotic Drugs and the Secretariat of the International Narcotics Control Board to enable them to meet the new tasks devolving upon them under the Convention. It was to be hoped that Governments would heed the appeal in the draft resolution and enable the narcotics bodies to shoulder their new burdens. His delegation wholeheartedly supported the draft resolution and hoped that it would be adopted unanimously.

17. Mr. WHOMERSLEY (United Kingdom) suggested that the concluding words of the operative paragraph in document E/CONF.82/L.4/Rev.1 should be amended to read: "... the tasks entrusted to them under this Convention and 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").

18. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that after many years of work a Convention had been concluded which gave new responsibilities to the Commission on Narcotic Drugs and the International Narcotics Control Board. Those bodies and their secretariats did not have enough resources to carry out their present duties; it was therefore essential to adopt the Bolivian draft resolution which called for the provision of necessary resources to the Division of Narcotic Drugs and the Secretariat of the Board. His delegation wholeheartedly supported the Bolivian draft resolution and hoped that it would be adopted by consensus.

19. Mr. WOTAVA (Austria) said that Austria had found all the proposals made for the draft resolution acceptable. He agreed with the representative of the Netherlands that the appropriate units within the United Nations system would require reinforcement once the Convention came into force. They would not be able to cope with any increase in workload unless resources were forthcoming. In that connection, he recalled that the Austrian delegation had had great difficulty in obtaining support for inclusion in the report of the Committee for Programme and Coordination of the following text: "The Committee recommended that the Secretary-General . . . keep in mind the concerns expressed by Member States regarding the proposed reductions in posts in smaller offices, especially in the areas of international peace and security, disarmament affairs, economic development and social programmes, including narcotic affairs, as well as in the regional commissions" (A/43/16, para. 37). The United States of America had supported the reference to narcotic affairs. He stressed the first two lines of the operative paragraph of the draft resolution in document E/CONF.82/L.4/Rev.1, and made a plea for all delegations to support the draft resolution, as it would be absurd if, having achieved agreement on the Convention, Parties denied the appropriate United Nations offices the necessary resources to carry out their task.

20. Mr. GAUTIER (France) said that the Conference did not have before it the final text proposed.

21. In reply to a request for clarifications from Mrs. SAIGA (Japan), Mr. AGUILAR (Bolivia) said that it was proposed to revise the operative part of the draft resolution by introducing a second operative paragraph reading: "Requests the Secretary-General to take the necessary steps to give effect to the provisions of paragraph 1".

22. Mr. FERRARIN (Italy) supported the draft resolution as amended.

23. Mr. BARNETT (Jamaica) said that, as he understood it, the proposal was: firstly, to replace the words "the international conventions on narcotic drugs and psychotropic substances" in the first preambular paragraph by the words "the Single Convention on Narcotic Drugs and the Single Convention as amended, as well as the Convention on Psychotropic Substances"; secondly, to replace the
words “existing international drug control treaties” in the
operative paragraph in document E/CONF.82/L.4/Rev.1 by
the words “the Single Convention, the Single Conven­
tion as amended and the Convention on Psychotropic
Substances”; thirdly, to add a second operative paragraph
reading: “Requests the Secretary-General to take the
necessary steps to give effect to the provisions of para­
graph 1”. He supported the draft resolution with those
amendments.

24. Mr. MARAMBA (Philippines) supported the view
that the Division of Narcotic Drugs and the Secretariat
of the International Narcotics Control Board should be sup­
plied with the necessary resources to discharge the tasks
entrusted to them under the Convention.

25. Mr. BRUCE (Ghana) agreed.

26. Mr. FERRARIN (Italy), supported by Mr. ERNER
(Turkey), Mr. van GORKOM (Netherlands), and
Mr. SABOIA (Brazil), proposed that the draft resolution
should be adopted as amended.

27. Mr. WHOMERSLEY (United Kingdom) said that he
did not oppose the draft resolution, but that there was an
illogicality in the proposed second operative paragraph:
only Parties could take the necessary steps to give effect
to the provisions of paragraph 1, the Secretary-General
could not.

28. Mr. BARNETT (Jamaica) proposed that the words
“within his competence” should be added after the word
“steps”.

29. The draft resolution was adopted as amended.

CLOSING STATEMENTS

30. The PRESIDENT said that illicit traffic in narcotic
drugs and psychotropic substances had expanded in recent
years to the point where it threatened to destroy the very
foundations of human society. Drug trafficking had been
called a crime of lèse-humanité. It was therefore all the
more encouraging to see how the international com­
nunity, acting through the Conference, had manifested its
determination to eliminate that scourge. In spite of con­
troversies and contradictions between the various conti­
nents and between the developed and the developing
countries, delegations had shouldered their responsibilities
and produced an instrument that was a message of hope
for mankind as a whole.

31. He expressed his sincere gratitude to the representa­
tive of the Secretary-General, the Executive Secretary, the
Secretary, the Rapporteur-General, the Legal Adviser and
the Chairmen of Committees I and II for their efforts to
sustain the “spirit of Vienna”. All participants in the
Conference had contributed, individually and collectively,
to its successful conclusion, which had been achieved by
consensus. By working together in full respect for national
sovereignty and the rights and duties established under
international law, the participants had advanced the cause
of human dignity, fraternity, peace and interdependence
throughout the world.

32. Mr. VETTOVAGLIA (Switzerland), speaking on
behalf of the Western European and other countries, said
that the Conference represented a historic moment in the
struggle against illicit traffic in narcotic drugs and psy­
chotropic substances. He expressed his warm thanks to
the representative of the Secretary-General, the Execu­
tive Secretary, the Chairmen of Committees I and II and
the Secretariat for their untiring efforts to produce the text
of the Convention on time. The President deserved the
highest praise for the way in which he had conducted
the work of the Conference, guiding it to a successful
conclusion and always respecting the rule of consensus.

33. Mr. POPOV (Bulgaria), speaking on behalf of the
Eastern European socialist countries, said that under the
able guidance of the President the Conference had come
to a successful conclusion. He felt sure that the date of 19
December 1988 would remain in the annals of mankind as
a milestone in the struggle of the international commu­
nity against illicit traffic in narcotic drugs and psychotropic
substances. As he saw it, the Convention that had just
been adopted by consensus showed that détente was now a
living reality. He wished to commend the President for
the able way in which he had conducted the debates and
to thank the Chairmen and Vice-Chairmen of Commit­
tees I and II, the Rapporteurs and all who had contributed
to producing the final text of the Convention, which, he
was convinced, would enter into force in 1989.

34. Mr. ALLAM (Egypt), speaking on behalf of the
African countries, said he wished to congratulate all
concerned on the successful conclusion of the work of the
Conference, which marked a turning point in the struggle
by the international community against crime in general
and illicit traffic in narcotic drugs and psychotropic sub­
stances in particular. The President deserved special
thanks for his exemplary handling of the debates, while
the members of the General Committee, the Chairmen
of Committees I and II, the Chairman of the Drafting
Committee, the representative of the Secretary-General,
the Executive Secretary and the Secretariat were also to be
commended for their efforts.

35. Although the African States were not as seriously
affected by the drug problem as by many other problems,
they fully intended to play their part in international ef­
torts to combat it.

36. Mr. PAREJO GONZALEZ (Colombia), speaking on
behalf of the countries of Latin America and the
Caribbean, said that the successful conclusion of the
Conference’s work promised well for the future of man­
kind. The signing of the Convention was a message of
hope for both present and future generations. He was
convinced that the “spirit of Vienna” would inspire all
concerned to even greater efforts in the struggle against
illicit traffic in narcotic drugs and psychotropic sub­
stances. He offered his most sincere thanks to the Presi­
dent, the representative of the Secretary-General, the
Chairmen of Committees I and II, the Rapporteurs and the
Secretariat for their outstanding efforts.
37. Mr. KONGSIRI (Thailand), speaking on behalf of the Group of Asian States, said that the labours of several years, during which a great number of obstacles and difficulties had been encountered and overcome, had culminated in the adoption of an instrument for which the whole of human society would be grateful, the implementation of which would be of great significance to the well-being of present and future generations. Congratulating all the office-holders of the Conference on their contributions to its success, and expressing thanks to the Director-General of the United Nations Office at Vienna and all the Secretariat staff for their efforts, he asked the head of the delegation of Austria to convey the gratitude of participants to the Government of Austria for the facilities provided, and not least for the privilege of meeting in the historic Hofburg.

38. Mr. RIZVI (International Criminal Police Organization), speaking at the President's invitation on behalf of the observers, congratulated the President on the completion of the work of the Conference, which was of the highest importance for organizations such as his own. The Convention that had just been adopted would help to strengthen international law enforcement agencies in their common task of combating illicit traffic in narcotic drugs and psychotropic substances.

SIGNATURE OF THE FINAL ACT AND OF THE CONVENTION (agenda item 6)

39. The PRESIDENT announced that the ceremony for the signature of the Final Act and of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances would take place the following morning.

The meeting rose at 9.05 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (E/CONF.82/3 and Corr.1)

1. Mr. BAILEY (Secretary of the Committee) drew attention to annex II to the report of the Review Group on the draft convention (E/CONF.82/3 and Corr.1), which contained the revised text of the draft, and to annex IV to the report, which set out a number of further proposals for the text.

Article 2, paragraph 3

Introductory wording

2. Mr. RAO (India) proposed that in the introductory wording the words "and other competent authorities" should be inserted after the word "courts" in order to take account of the situation in a number of countries.

3. Mr. AL-NOWAISER (Saudi Arabia) supported the Indian proposal for the addition of the words "and other competent authorities" to the introductory wording.

4. Mr. SZEKELY (Mexico) said his delegation understood the introductory wording as being intended to strengthen the administration of justice in the matter of drug trafficking offences by identifying aggravating circumstances which made their commission particularly serious. The introductory wording should therefore be as forceful as possible. His delegation had no objection to the Indian proposal but would prefer the addition to read "and other competent judicial authorities", because authorities other than judicial ones were freer not to take aggravating circumstances into account.

5. Mr. MADDEN (Jamaica) suggested that the introductory wording should be amended to make it clear that courts were recommended to take the circumstances outlined in subparagraphs (a) to (g) into account in passing sentence on convicted offenders. Accordingly, the phrase "in considering the sanction to be imposed on a convicted offender" should be inserted in the introductory wording after the words "that the courts". It was important not to alter the introductory wording in a way which meant that the convention was dictating the actions of courts and thereby impinging on the independence of the judiciary.

6. Mr. BAEYENS (France) agreed that the convention should not encroach on the freedom of the courts to take such decisions as they deemed appropriate.

7. Mr. KATHOLNIGG (Federal Republic of Germany) reminded delegations that the introductory wording and the list of aggravating circumstances which followed it represented a compromise hammered out after extensive negotiations in the open-ended intergovernmental expert group to consider the draft convention. If the language of the introductory wording was made stronger, the structure of the entire article would be affected. Provided that the introductory wording was not modified substantially, he could accept the Indian proposal to add to it the words "and other competent authorities". He was fully in agreement with the remarks just made about the independence of the judiciary.

8. Mr. RAO (India) said that the introductory wording might be strengthened by deleting the two auxiliary verbs "can" and "may". It was intended to be an enabling provision; the courts were not being asked to take a particular view of any particular case.

9. Mr. ERNER (Turkey) said that the word "courts" could surely stand on its own without the addition of the words proposed by India, since a judicial hearing in any country could be called a court.

10. Mr. GONZALEZ (Chile) said that the narcotics trade was an international scourge and the introductory wording should therefore be strengthened. The fact that courts were enabled to take aggravating circumstances into consideration was not enough; they should be obliged to do so. He agreed that the reference to "courts" in the introductory wording should remain as it was.
11. Mr. LAVIÑA (Philippines) agreed that the introductory wording should be strengthened. He therefore supported the Indian proposal to omit the two auxiliary verbs.

12. Mr. BRUCE (Ghana) said that the introductory wording should definitely mention "competent authorities" since in his country drug offenders were tried by special public tribunals.

13. Mr. KURAA (Egypt) said that it was right to oblige courts to take aggravating circumstances into consideration. The term "courts" should not be amplified since courts and competent authorities were in effect the same. Any confusion as to the meaning of the term "court" might be dispelled by defining it at a suitable place in the text.

14. Mr. LOW MURTRA (Colombia) agreed with the representative of Chile that the introductory paragraph should be strengthened. Colombian practice was such that a reference to "other competent authorities" would be required unless the suggestion by the representative of Egypt to define the term "court" was accepted and the definition covered the Colombian situation.

15. The CHAIRMAN asked the Indian representative whether he would consider altering his proposal to read "and other competent judicial authorities".

16. Mr. RAO (India) said that the word "judicial" would be inappropriate for the situation in India.

17. Mr. KATHOLNIGG (Federal Republic of Germany) said that he could agree to the addition of the words "and other competent authorities" provided that the introductory paragraph did not become mandatory.

18. Mr. SZEKELY (Mexico) said that his delegation could accept the wording "and other competent authorities" but it could not see why the paragraph should not be mandatory. He wished it to have the greatest possible deterrent effect, which could be achieved by making it mandatory for courts to take aggravating circumstances into account.

19. Mrs. MOLOKWU (Nigeria) said that the Nigerian situation led her to support the wording "and other competent authorities".

20. Mr. KATHOLNIGG (Federal Republic of Germany) said that the paragraph could not be mandatory with the words "such as" at the end of the introductory wording. His delegation could agree to delete the word "may" on condition that the word "can" remained. The addition of the words "for a similar offence" after the words "prior conviction" in subparagraph (g) would make it impossible for the provision to be implemented in his country, which had recently decided that prior convictions were not necessarily to be taken into account in sentencing.

21. Mrs. WEISMAN (Israel) said that it was unacceptable to make the introductory paragraph mandatory, but she could see no objection to the words "other competent judicial authorities" being added to it, although in her country the competent authorities were in fact the courts.

22. Mr. BROUSSE (Monaco) said that the French term "jurisdictions compétentes" covered collegiate tribunals, unpersonal judges, special courts and customary courts, as well as any parajudicial authority which might be given jurisdiction. He therefore proposed the expression "other competent authorities having jurisdiction" as an alternative to what India had suggested.

23. Mr. VETTOVAGLIA (Switzerland) agreed with the Federal Republic of Germany that the word "may" should not be deleted unless the word "can" was retained.

24. Mr. LAVIÑA (Philippines) said that the introductory wording should be mandatory and that both "can" and "may" should therefore be deleted.

25. Mr. WOTA (Austria) supported the view that the word "can" should be retained but that the word "may" might be omitted. It was important to preserve the independence of the judiciary. At the same time, he found it hard to imagine that any court would ignore aggravating circumstances.

26. Mr. LOW MURTRA (Colombia) favoured the deletion of the word "may" since that would strengthen the obligatory nature of the provision. The implementation in national legislation of the requirement which the provision laid down would be more effective if there was a binding international instrument to back it up. The provision should be mandatory for the offences which the paragraph listed but the list should not be exhaustive; in other words, it should be possible for individual national laws to apply the requirement to other offences as well.

27. The CHAIRMAN suggested that, in order to meet the views which delegations had expressed, the words "other competent authorities having jurisdiction" should be inserted in the introductory wording after the word "courts"; that the auxiliary verb "can" in that wording should be retained, it being the case that in English it had the sense of "allow, enable" whereas the word "may" contained an idea of "option"; and that the auxiliary verb "may" should be deleted from the wording. He thought that in that way the enabling aspect of the paragraph would be balanced against the desire to strengthen it and the need to preserve the independence of the judiciary.

28. Mr. SCHUTTE (Netherlands) said that the competent authorities having jurisdiction in question would be those able to deal with criminal charges and impose sentence. That kind of activity was recognized in other United Nations instruments, in particular the International Covenant on Civil and Political Rights, article 14 of which used the expression "courts and tribunals". It should be made clear that the new convention did not deviate from other international instruments with regard to bodies having authority to impose sentence on offenders and that the expression "other competent authorities having jurisdiction" was in keeping with the terminology which those instruments used.
29. Mrs. CHAVARRI DUPUY (Peru) said that her delegation believed that the list of circumstances in paragraph 3 must be a matter for mandatory consideration by the courts, but that they should have discretion to decide whether the existence of any such aggravating circumstances should lead to the imposition of a more severe penalty.

30. Mr. LEE (Canada) approved the text of the introductory wording which would result from the changes suggested by the Chairman.

31. The CHAIRMAN invited the Committee to approve the text of the introductory wording to article 2, paragraph 3 as reproduced in document E/CONF.82/3 with the changes which he had suggested, and to do so without referring it to the Drafting Committee.

32. The introductory wording to article 2, paragraph 3, as amended, was approved.

33. Article 2, paragraph 3(a), was approved.

Subparagraph (a)

34. Mr. ERSAVCI (Turkey) proposed the addition of the words “such as arms smuggling and international terrorism” at the end of the subparagraph.

35. Mr. MADDEN (Jamaica), supported by Mr. BRUCE (Ghana), Mr. GONZALEZ LOPEZ (Cuba) and Mr. ALOZAIR (Yemen), said that he preferred the text of subparagraph (b) as it stood.

36. Mr. LIEBERT (Papua New Guinea) approved the addition proposed by Turkey because it was specific. The term “international organized criminal activities” could of course be interpreted widely, and could include fiscal activities, but drug trafficking and arms smuggling were often linked and the convention should reflect that.

37. Mr. MEYER (United States of America) said that his delegation supported the proposal by Turkey but would prefer the word “including” in place of the words “such as”.

38. Mr. OSTROVSKI (Union of Soviet Socialist Republics) said that he delegation saw merit in the Turkish proposal but felt that the subparagraph should not enumerate examples. The existing language covered terrorist activities under the term “criminal activities”. In any case, the term “terrorist activities” was not yet defined internationally.

39. Mr. DUFT (German Democratic Republic) said that his delegation preferred the text as it stood.

40. Mr. POPOV (Bulgaria) said that the notions of “terrorism” and “terrorist acts” were still far from legal definition. It had been his experience in many international meetings at which terrorism had been discussed, that certain activities were regarded as terrorism by some States but as justified action by others. He would be extremely impressed if the present Conference succeeded in defining “terrorist activities”.

41. Mr. EDWARDS (United Kingdom) said that, in view of the absence of an international definition of terrorism, his delegation’s preference was that the examples suggested by Turkey should be included in the commentary to the convention.

42. Mr. FOFANA (Senegal) supported the view put forward by the Soviet Union representative. Terrorist activities could be taken to be covered by the use of the word “other” in subparagraph (b).

43. The CHAIRMAN observed that no firm decision had yet been taken about a commentary to the convention.

44. Mr. ERSAVCI (Turkey) said that his delegation’s proposal had been designed to highlight the well-documented fact that the profits of trafficking were used to purchase arms and to upset the balance in society.

45. Mr. SZEKELY (Mexico) pointed out that nothing had yet been said against the other part of the proposal by Turkey, which spoke of arms smuggling; that was a very serious problem for many countries. He suggested that subparagraph (b) might be worded as follows: “The involvement of the offender in arms smuggling or other international organized criminal activities”. The violent crimes committed by drug traffickers relied extensively on arms which were smuggled across frontiers. That had an impact on the social and political stability of nations by undermining the authorities’ control of the movement of arms.

46. Mr. ERSAVCI (Turkey) and Mr. RAO (India) supported the Mexican proposal.

47. Mr. GONZALEZ (Chile) said that his delegation preferred the wording originally proposed by Turkey. If it was not possible to include it in its entirety, his delegation would favour a reference in the subparagraph to arms smuggling or to clandestine traffic in arms.

New subparagraph (f) bis (E/CONF.82/3, annex IV)

48. Mr. BRUCE (Ghana) drew attention to the Mexican proposal (E/CONF.82/3, annex IV, p. 109) for a new subparagraph (f) bis. The scourge of drug trafficking was visited most tragically on young people, and one of the convention’s main aims was to make the world a safe and healthy place for future generations. In Ghana, special emphasis was placed on combating drug abuse in schools; students caught smoking hemp were immediately expelled, a task force headed by the Minister for the Interior focused on the problems of young people at all levels of the educational system, and material designed to prevent drug abuse and promote drug-free life-styles was incorporated in all school curricula. He fully endorsed the proposal and would favour its expansion to specify that courts should consider imposing heavy sentences if the offence of illicit trafficking was committed at an educational institution or in a public place.
49. Ms. HUSSEIN (Malaysia) said that the proposal might be more effective if it referred to the people who committed the offence and not to the place where it was committed.

50. Mr. SZEKELY (Mexico) said that his delegation would be willing to work on any expansion of its proposal that would ensure better protection for young people. The proposal was designed to cater for the unfortunate fact that drug traffickers used places where young people congregated, such as schools, for distributing drugs. The reference in the proposal to “vicinity” was explained by the fact that when control mechanisms prevented drug traffickers from entering school premises they accosted young people in areas close by.

51. Mr. KATHOLNIGG (Federal Republic of Germany) said that the term “vicinity” would have no application in his country’s legal system. The phrase “penitentiary centres” in the proposal was ambiguous; if it referred only to jails, it would be unacceptable to his delegation. He suggested that the Mexican delegation might wish to propose wording on the subject which would relate the offence to individuals and not to places.

52. Mr. LAVINA (Philippines) supported the proposal but thought its drafting could be improved.

53. Mr. GONZALEZ (Chile) also supported the proposal.

54. Mr. LOW MURTRA (Colombia) supported the proposal. It was obviously desirable to protect the most vulnerable members of society such as minors and prisoners. The notion of “vicinity” in the proposal was one which could be left for interpretation by the competent authorities.

55. Mrs. CHAVARRI DUPUY (Peru) also supported the proposal.

Subparagraph (g)

56. Mr. SCHUTTE (Netherlands) suggested that in subparagraph (g) the words “for a similar offence” be inserted after the words “prior conviction”.

57. Mr. LAVINA (Philippines) and Mr. KURAA (Egypt) supported the proposal.

The meeting rose at 1 p.m.

2nd meeting
Monday, 28 November 1988, at 4.10 p.m.

Chairman: Mr. POLEMINI (Italy)

ELECTION OF OFFICERS

1. The CHAIRMAN announced that agreement had been reached by the heads of the various regional groups, following consultations with the President of the Conference, regarding the remaining offices to be filled.

2. Mr. Hena (Bangladesh) was elected Vice-Chairman and Mr. Hugler (German Democratic Republic) was elected Rapporteur of Committee I.

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 (continued)

Paragraph 3(b) (continued)

3. The CHAIRMAN recalled that, at the previous meeting, it had been suggested that the reference in paragraph 3(b) to “international organized criminal activities” should be expanded by mentioning arms smuggling and terrorism, as examples.

4. Mr. ERNER (Turkey) observed that the Commission on Narcotic Drugs had decided in 1985 to include a reference to arms smuggling and terrorism in the same context. That decision had been endorsed by the Economic and Social Council. International terrorism was a phenomenon which affected a great many countries and he saw no reason why there should be any reluctance to mention it. As for arms smuggling, it was a well-known fact that the proceeds of illicit traffic in drugs were channelled into arms traffic.

5. Mr. BAHEYENS (France) urged the retention of the general formula “international organized criminal activities” without the addition of any examples. Any attempt to include a list of examples would result in an unduly long enumeration.

6. Mr. FERRARIN (Italy) said that he too would prefer to leave the text of subparagraph (b) unchanged. Any citing of examples would have the effect of giving undue stress to those mentioned and of detracting from the importance of other criminal activities.

7. Mr. BRUCE (Ghana) agreed with the two previous speakers and drew attention to the fact that subparagraph (d) referred to the “use of firearms or violence”.

8. Mr. AL-NOWAISER (Saudi Arabia) said that the Turkish representative’s suggestion was a useful one. However, in view of the discussion which had taken place, that representative might perhaps consider not pressing it.

9. Mr. LOW MURTRA (Colombia) supported the Mexican representative’s proposal to incorporate a specific reference to “arms smuggling”, which was a particularly important factor in connection with drug trafficking.

10. Mrs. VILLALOBOS (Costa Rica) said that any attempt to list particular criminal activities would result in an unduly long enumeration.

11. The CHAIRMAN said that the reference to arms smuggling could be introduced either before the words “other international organized criminal activities” (i.e. in the form of “arms smuggling or”) or after those words (in the form of “such as arms smuggling”).

12. Mr. SZEKELY (Mexico) said that either solution would satisfy him. It was important to bear in mind that the provision under consideration referred exclusively to the offences mentioned in paragraph 1 of article 2. It was precisely in that context, and only in that context, that he had suggested introducing into paragraph 3(b) a reference to arms smuggling. The smuggling of arms was an extremely serious phenomenon and one that was closely linked to drug trafficking.

13. The CHAIRMAN took informally the sense of the meeting and found that a substantial majority appeared to favour retaining the text of subparagraph (b), without the addition of the words suggested by the Mexican representative.

14. Mr. ERNER (Turkey) said that the reference made to the use of firearms and violence in subparagraph (d) was not relevant to the present discussion. It did not concern the particular problem of international organized criminal activities. He expressed his disappointment at the fact that a majority of the participants had shown a reluctance to include a specific reference to arms smuggling.

15. The CHAIRMAN said he took it that the Committee approved paragraph 3(b) without any change, on the understanding that the reservations expressed by various representatives would be recorded.

16. It was so decided.

Paragraph 3(c)

17. Mr. LAVIÑA (Philippines) said the text of subparagraph (c) was somewhat vague and did not bring out the idea that the involvement of the offender in other illegal activities constituted an aggravating circumstance in the case of drug offences. He suggested that the text should be amended to make that clear.

18. The CHAIRMAN observed that, in the open-ended intergovernmental expert group, the intention had been to deal in subparagraph (c) with illegal activities which were facilitated by the commission of the drug offence. Accordingly, the question now before the Committee was whether it wished to change the substance of subparagraph (c).

19. Mr. MEYER (United States of America) said that his delegation’s understanding of subparagraph (c) was exactly that indicated by the Chairman. The text of the subparagraph was clear and he urged that it should be adopted as it stood.

20. Mr. LAUVINÉA (Philippines) said that if the intention was that indicated by the Chairman then the text was not at all clear. He expressed his delegation’s reservation on it.

21. The CHAIRMAN said that, in the absence of objection, he took it that the Committee approved paragraph 3(c) without any change.

22. It was so decided.

Paragraph 3(d)

23. The CHAIRMAN said that there had been a suggestion to reverse the order of the words in subparagraph (d), so as to make it refer to “the use of violence or firearms”. That change did not affect the substance but was merely one of presentation.

24. Mr. AL-NOWAISER (Saudi Arabia) suggested that the words “by the offender” should be inserted at the end of the text, to bring it into line with the other subparagraphs, in particular subparagraph (c).

25. Mr. POPOV (Bulgaria) said that the reference to “firearms” was not broad enough. A knife was also a lethal weapon.

26. The CHAIRMAN pointed out that the term “violence” covered all forms of violence, with or without weapons.

27. Mr. RAO (India) suggested the use of the words “dangerous weapons” instead of “firearms”.

28. Mr. KATHOLNIOG (Federal Republic of Germany) pointed out that there had been great difficulties in German law, and no doubt in the law of other countries, regarding the definition of a “weapon”.

29. Mr. POPOV (Bulgaria) proposed that the term “firearms” should be replaced by “arms”. That formulation would make it possible to reconcile the different conceptions in the various national legislations.

30. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved paragraph 3(d), amended as proposed by Saudi Arabia and Bulgaria. The text would then read “(d) the use of violence or arms by the offender”.

31. It was so decided.

Paragraph 3(e)

32. Mr. LIEBERT (Papua New Guinea) said that the text of subparagraph (e) was unduly restrictive in that it
required the offender to hold a public office and the offence to be connected with the office in question. In the first place, he saw no need to specify that there should be such a connection; it was enough for the offender to hold a public office. He would in fact go even further and suggest that any person in a position of trust or leadership, such as a banker, should be given the same treatment as a holder of actual public office.

33. Mr. CAJIAS (Bolivia) disagreed with the previous speaker. The text should be left as it stood. It did not refer to the actual perpetration of a crime but to an aggravating circumstance, which consisted in the misuse of public office by its holder. That misuse by the holder had the effect of aggravating his criminal responsibility.

34. Mr. RAO (India) said that the subparagraph should perhaps refer specifically to the "misuse" of the public office in question.

35. Mr. BAEYENS (France) said that he agreed with the two previous speakers.

36. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved paragraph 3(e) without change.

37. It was so decided.

Paragraph 3(f)

38. Mr. SZEKELY (Mexico) proposed that subparagraph (f) should be strengthened by replacing the word "use" by "exploitation". Furthermore, since the term "minors" had a generally limitative sense, and could cover different age-groups, depending on the national legislation concerned, it should be replaced by the more explicit and comprehensive expression "children and young people". That would also cover young persons who, although legally adult, were still at risk.

39. Mr. BROUSSE (Monaco) said that the Monegasque authorities, deliberating the matter in the national context in anticipation of the present work on an international convention, had taken account of the different ages at which legal majority might be attained, and had opted for the expression "persons under 21 years of age" to describe those who required specific protection against a criminal underworld that was international in nature.

40. Mr. POPOV (Bulgaria) suggested that the subparagraph, as drafted, should be expanded and rendered more explicit by indicating that the term "minors" was to be interpreted in accordance with the legal system in effect in the country concerned.

41. Mr. OSTROVSKI (Union of Soviet Socialist Republics) considered that the term "minors" was self-explanatory. Its legal significance would be readily understood, particularly in an international instrument such as that under consideration. He did not favour inserting a reference to a specific age as a definition.

42. Mr. RAO (India) suggested that if the term "minors"—with which he himself had no difficulty—posed problems for certain delegations it might be replaced by "juveniles". He was strongly in favour of a reference to "exploitation".

43. Mr. MEYER (United States of America) considered that, at least as far as the English language was concerned, the term "minors" was explicit, and more specific than "juveniles". He submitted that the question of its proper interpretation in domestic law was in any case covered by article 2, paragraph 8.

44. Mr. CAPEK (Czechoslovakia) suggested that the subparagraph should be expanded to read "(f) the victimization of other persons, especially of minors".

45. Mr. SCHUTTE (Netherlands) said that the terms "minors" and "juveniles" were both acceptable to him; he added that domestic law could, if it wished, extend the application of the clause in question beyond the legal age of majority.

46. Particularly in the context under discussion, there could be a significant difference between the meanings of the terms "use" and "exploitation". Young people could be "used" in drug trafficking without, strictly speaking, being "exploited".

47. Mr. LOW MURTRA (Colombia) considered subparagraph (f) acceptable as it stood. The term "minors" required no explanation and he would prefer to see the word "use" retained because of the point made by the previous speaker. To use young people in drug trafficking should most certainly be regarded as a particularly serious offence.

48. Mr. CAJIAS (Bolivia) said that, notwithstanding the quest for simple terms, the single word "menores", at least as far as the Spanish text was concerned, was too elastic. At the least, it should be replaced by "menores de edad".

49. Mr. YASSIN GAILI (Sudan) considered it preferable to leave the draft text unchanged.

50. Mr. JANSZ (Sri Lanka) said that the term "minors", which was defined in all national legislations and implied certain mandatory protections, required no additional explanation. He suggested that the other point which had been raised might be resolved by using the formula "(f) the exploitation or use of minors".

51. Mr. AL-NOWAISER (Saudi Arabia) said that he favoured retention of the existing text.

52. Mr. SZEKELY (Mexico) said that he did not wish to press for an alternative to the term "minors"; his sole concern was to ensure that the vulnerable group in question, namely children and young people, would be as fully protected as possible. If the English word "minors" was satisfactory in that connection, he, for his part, could accept "menores de edad" for the Spanish version.

53. Mr. AL-SHRAIDH (Jordan) considered that the term "minors", signifying persons who had not attained legal majority, was quite adequate.
54. Mr. EDWARDS (United Kingdom) said that for his delegation, the term "minors" was clear and comprehensive, signifying persons up to 18 years of age. Perhaps, as Spanish-speaking representatives had suggested, the problem was one of language. He preferred the term "use" to "exploitation" as being broader, and, in consequence, believed that the draft text should be approved without change.

55. Mr. ASSADI (Islamic Republic of Iran) said he believed the term "minor" was clearly defined in all national legislations. In his view the present text should be retained.

56. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved paragraph 3(f) as drafted, on the understanding that the term "use" included exploitation and that the translation of "minors" in the Spanish version would be revised.

57. It was so decided.

58. Mr. POPOV (Bulgaria) said that in suggesting an amendment to paragraph 3(f) he had been motivated by a concern for universal justice. He submitted that since legal maturity was considered to be reached at different ages in different countries, that universality was in danger of being impaired in the text just approved. He neither challenged nor objected to the retention of that text, but felt constrained to observe that failure to be more specific as far as the term "minors" was concerned would leave internationally established duties and obligations open to different interpretations.

Paragraph 3(f) bis (continued) (E/CONF.82/C.1/L.8)

59. The CHAIRMAN said that a number of delegations had submitted in document E/CONF.82/C.1/L.8 an amendment in the form of a new subparagraph (f) bis, the effect of which would be to include the fact that the offence was committed in schools or social service or penitentiary centres or in their vicinity among the circumstances which might make the commission of the offences set forth in paragraph 1 of article 2 particularly serious. He invited comment on the amendment.

60. Mr. LIEBERT (Papua New Guinea) submitted that the term "penitentiary" was excessively technical and not of general usage. He suggested the substitution of the word "custodial" as being more comprehensive.

61. Mr. MEYER (United States of America) said that he had no difficulty with the principle of the proposed subparagraph. Its wording might, however, be improved. He found the suggestion, albeit inadvertent, that the inmates of penitentiaries might be implicated in the offences in question "in the vicinity of" those establishments somewhat disconcerting. He would prefer the clause to read "the fact that the offence is committed in a penal institution, or in schools or social service facilities or in their vicinity".

62. Mr. SCHUTTE (Netherlands) said that notwithstanding the obvious, basic intention of the proposal, he could not fully understand the significance of singling out specific locations as aggravating circumstances when the real concern was presumably with the persons occupying those locations. In that connection, he submitted that certain activities might be carried out in schools or social service centres or in their vicinity when they were unoccupied by the young people considered to be particularly at risk (and who, it seemed, would in any case be adequately protected by the provisions of subparagraph (f)); if the thrust of the first part of the proposal was—as he presumed—in the direction of minors, he would further point out that there also existed schools for adults. So far as penitentiary centres or penal institutions were concerned, he considered it utopian to believe that they would ever be entirely drug-free. Without for an instant adhering to the cynical view that the circulation of drugs within such establishments was less a matter of concern than trafficking outside, he was not sure why the former should be deemed an aggravating circumstance for the purposes of article 2. Perhaps the sponsors of the proposal could throw more light on the matter?

63. Mr. SZEKELY (Mexico) said that the international community must do all in its power to keep drug traffickers away from schools, which were among the most vulnerable locations and contained the most vulnerable of populations. In fact, there should be concern not merely with what happened in schools or in their vicinity, but in all places where young people gathered or were educated.

64. He was equally convinced that drug trafficking in penitentiary centres or penal institutions constituted a grave problem, and was a criminal activity among criminals, undoubtedly impeding their rehabilitation. In both the domains referred to, the most energetic action possible was called for.

65. Mr. KATHOLNIGG (Federal Republic of Germany) shared the doubts expressed by the representative of the Netherlands. He failed to see why what was already considered a criminal offence in prisons should be listed among the aggravating circumstances under consideration. In the event that the real concern of the sponsors of the proposal was with the provision of drugs by prison officers to inmates, he would submit that that matter was already covered by subparagraph (e).

66. Similarly, he considered that subparagraph (f) already provided the protection for minors which was sought in the proposal before the Committee. Furthermore, he doubted whether the term "vicinity" was legally meaningful. He wondered whether the Committee might not agree that subparagraphs (e) and (f), as approved, embodied the concerns expressed in the proposed new subparagraph.

67. Mr. LOW MURTRA (Colombia) said that his delegation strongly supported the proposed new subparagraph (f) bis. One of the most serious aspects of the present situation was the continuing growth of the demand for drugs. Although he had no wish to point the finger either at producing countries or at consuming countries, no progress could be made unless the problem of increasing
demand was attacked in depth. One particularly vicious feature of the activities of drug traffickers was their attempt to implant the drug habit in schools, penal institutions and social welfare facilities. Among the vulnerable populations of such places drug-taking could spread like the plague. It was vitally important to regard the commission of drug offences in those places as aggravating circumstances. He therefore supported the proposal in document E/CONF.82/C.1/L.8, amended as proposed by the United States.

68. Mr. LAVIÑA (Philippines) said that he believed the Committee could agree to adopt the United States amendment to the proposed new subparagraph, taking note of the reservations which had been expressed.

69. Mr. AL-NOWAISER (Saudi Arabia) drew attention to the fact that drug traffickers attempted to foster the drug habit by making free samples available in the vicinity of schools. Protection for the vulnerable school populations had to be stepped up and he fully shared the concern expressed by the delegation of Mexico.

70. Mr. BRUCE (Ghana) said that schoolchildren were gravely at risk, since drug traffickers were sparing no efforts to build up their trade. There was also a problem in penal establishments. He supported the United States amendment to the text under consideration.

71. Mr. MADDEN (Jamaica) observed that the two delegations which had expressed reservations were in no sense opposed to the general aim but were merely querying the manner in which it was to be achieved. He read out an alternative wording which he hoped they would be able to accept.

72. Mr. ASSADI (Islamic Republic of Iran) said that it could be argued that the offence under discussion was already covered by subparagraph (f) of paragraph 3. That would be one way of meeting the objections of the Netherlands and the Federal Republic of Germany.

73. Mr. SZEKELY (Mexico) said that the public would be outraged—and rightly so—if it transpired that an international conference could not agree more severe penalties should be imposed for drug trafficking offences committed in the vicinity of schools. There was after all a binding obligation to protect young persons.

74. Mr. PAIXAO (Argentina) said that the principle had to be accepted that the more vulnerable a population, the greater the need for protection. His delegation wished to go further and would later be submitting a proposal covering the practice of taking schoolchildren to tourist or recreational centres during school hours, thus exposing them to approaches by drug traffickers.

75. Mr. LEE (Canada) reminded the Committee that the aim of the present discussion was not to define an offence but to specify aggravating circumstances. He proposed another wording, based on the United States amendment, which would make subparagraph (f) bis read as follows: “The fact that the offence is committed in a penal institution or an educational institution or a social service facility or in their immediate vicinity”.

76. Mr. GONZALEZ (Chile) said that 50 per cent of the population of Latin America was under 18 years of age. Those young people, attending educational institutions, were in consequence exposed to the approaches of drug traffickers. His delegation supported the joint amendment.

77. Mr. POPOV (Bulgaria) said that his delegation supported the wording proposed by the United States representative.

78. Mr. SCHUTTE (Netherlands) said that, in his original statement, he had posed a number of questions, which had been very fully answered in the course of the discussion. He could therefore accept the amendment proposed by the Canadian delegation.

79. Mr. EDWARDS (United Kingdom) also supported the amendment proposed by the Canadian delegation.

80. Mr. KATHOLNIGG (Federal Republic of Germany) said that his delegation would need time for legal consultations on the wording of the subparagraph and accordingly maintained its reservations.

81. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the proposed new paragraph 3(f) bis, amended as proposed by the Canadian representative, subject to the reservations expressed by the Federal Republic of Germany.

82. It was so decided.

Paragraph 3(g) (continued)

83. Mr. SCHUTTE (Netherlands) repeated his previous proposal to include the words “for a similar offence” after the words “prior conviction”.

84. Mr. CAJIAS (Bolivia) said that subparagraph (g) needed radical redrafting. It was not merely a question of recidivism, a concept which in any case did not figure in all national legislations. He believed the main problem to be addressed was that of habitual offenders and those who earned their living by drug trafficking, irrespective of whether or not they had prior convictions.

85. Mr. SZEKELY (Mexico) said that the Committee’s immediate concern was not with the offences themselves but with the aggravating circumstances to be taken into account. Under normal circumstances, the judge was always entitled to take account of the criminal background of the accused. If the accused had a record of similar offences, that was relevant and was therefore an aggravating circumstance. Other offences—even homicide—were not necessarily relevant.

86. Mr. LAVIÑA (Philippines) said that he preferred the broader formula, without the insertion of the words “for similar offences”.

87. Mr. BAKEYNS (France) supported the amendment proposed by the Netherlands. It was essential in his view
to retain in the subparagraph the words "under the domestic law of a Party".

88. Mr. JANSZ (Sri Lanka) also supported the Netherlands amendment. He observed, however, that in some systems of law the accused's record could not be introduced prior to conviction.

89. Mr. KATHOLNIGG (Federal Republic of Germany) said that he too supported the Netherlands amendment.

90. Mr. LEE (Canada) said that the Netherlands proposal did not in his view unduly narrow the focus of the proposed convention. Any prior conviction could still be regarded as an aggravating circumstance.

91. Mr. ALLAGUI (Tunisia) suggested, as a compromise addition to the Netherlands amendment, the insertion of the words "in particular" before the words "for a similar offence".

92. Mr. SCHUTTE (Netherlands) said that the concept of similar offences was important if the aim was—as it must be—to promulgate effective law. He was however prepared to accept the Tunisian proposal, namely "prior conviction, in particular for similar offences, ...".

93. The Netherlands proposal, as amended by Tunisia, was adopted.

94. The CHAIRMAN wondered whether the amendment just adopted satisfied the concerns of the Bolivian delegation.

95. Mr. CAJIAS (Bolivia) said that the concept of recidivism was defined in various ways, but it implied previous criminal convictions. "Habituality", however, was a different concept; for example, a dealer might have been supplying schoolchildren with drugs regularly over a period of, say, six months. He might also be living on the earnings of such an activity; that brought in the concept of "professionality". He would like to see both "habituality" and "professionality" covered in the text.

96. The CHAIRMAN suggested that a new paragraph covering those points might be considered at a later stage if a textual proposal was submitted.

Paragraph 3 bis

97. The CHAIRMAN invited the Mexican delegation to introduce the proposal for a new paragraph 3 bis which appeared on page 109 of document E/CONF.82/3.

98. Mr. SZEKELEY (Mexico) said that the object of the Conference was to adopt a convention that would strengthen the capacity of the international community to combat drug trafficking both through international cooperation and through internal measures taken by individual States. The aim must be to make drug law enforcement stricter. Some States had been successful in closing most of the loopholes available to drug traffickers, whereas others had not yet been able to develop strict enough legislation to combat drug traffic. The aim of the new paragraph proposed by Mexico was to oblige States to initiate legislation to close the loopholes now being used by traffickers. At present, the effect of the arrangements permitted by legislation in some countries was that traffickers were hardly ever convicted or were given very short sentences. Allowing drug distributors to stay on the streets promoted drug consumption and that in turn led to increased production in countries such as his own. If the producing countries were to accept strict obligations, consuming countries should also be expected to control demand effectively.

99. Mr. LOW MURTRA (Colombia) said that his delegation had difficulty in supporting the proposal just introduced. The struggle against the drug traffic was a complex matter, and Colombia had found that it could be waged more effectively with the help of what might be referred to as "extra-procedural" measures. Thus by a promise of reduced penalties an offender could sometimes be persuaded to provide information enabling others to be apprehended. Such information might be very important to the police in their pursuit of traffickers; allowing the possibility of arrangements of that kind was in no way a matter of laxity.

100. Mr. MEYER (United States of America) said that his delegation shared the reservations just expressed. The experience of the United States had been that the ability of prosecutors to be flexible in regard to sentences recommended had been very useful in obtaining intelligence. It was often difficult to prosecute a big criminal if a small criminal could not be offered inducements to co-operate. It was important to consider what measures were actually effective in the fight against drug crimes.

101. Mr. SAINT-DENIS (Canada) said that his delegation, while sympathizing very much with the motives underlying the Mexican proposal, shared the concerns expressed by the Colombian delegation. It was often necessary to be able to bargain with lower-echelon criminals in order to reach the higher-echelon criminals. Consequently, his delegation could not support the Mexican proposal.

102. Mr. SZEKELEY (Mexico) said it should be borne in mind that there were great numbers of dealers selling drugs to consumers, whereas the organizers were far fewer in number. He knew that the bargaining technique was favoured in some countries, but statistics he had seen showed that the technique was used generously and in a manner that was not always justified by the need to apprehend and prosecute the major criminals. It was sometimes used because there were not enough courts to try all the offenders arrested, or not enough prisons to accommodate them. The result was that battalions of dealers went back to the streets to deliver drugs to consumers. Mexico's proposal was flexible, but if some delegations found it too radical an attempt could perhaps be made to arrive at a still more flexible text through informal consultations.

103. It was important to close at least some of the loopholes available to traffickers.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 (continued)

New paragraph 3(f) ter (E/CONF.82/C.1/L.10)

1. Mr. PAIXAO (Argentina), introducing document E/CONF.82/C.1/L.10, recalled the view expressed during the discussion of paragraph 3(f) bis that it was not enough to offer protection to specific groups of people solely in the places where they normally carried on their activities. That was particularly true of schoolchildren, who were one of the main targets of drug trafficking. Consequently, the amendment submitted by his own delegation and those of Colombia and Mexico sought to extend the protection given to groups of schoolchildren to cover such places as museums, cinemas, theatres and recreational areas where out-of-school activities were conducted. Groups of schoolchildren sometimes visited tourist areas as well in the course of out-of-school activities.

2. Mr. MUÑOZ MALAVER (Peru) supported the amendment and said that his country's legislation on the matter extended to sports activities.

3. Mr. BRUCE (Ghana) pointed out that the agreed text of paragraph 3(f) bis, which referred to social service facilities, already covered such places as recreational, sports and cultural centres. In his view, the proposal in document E/CONF.82/C.1/L.10 would only weaken that text.

4. Mr. OSTROVSKI (Union of Soviet Socialist Republics) said that, while he had no objection to the substance of the proposed new paragraph 3(f) ter, he recognized the force of the observation by Ghana; the addition of greater detail often had the opposite effect to the one intended. The purpose of paragraph 3(f) was to make the victimization of minors an aggravating circumstance and the proposed amendment appeared, at first sight, to meet that aim. But there seemed to be no reason to limit the activities mentioned to culture and recreation: sports activities could also be included, and no doubt others too. The problem was to decide whether greater detail improved the text or reduced the significance of general provisions that were designed to cover all cases.

5. The CHAIRMAN invited the Committee to consider the possibility of adding the words "as well as in places or areas where groups of schoolchildren carry on out-of-school activities" to the end of the agreed text of paragraph 3(f) bis. He felt that would accommodate the proposal in document E/CONF.82/C.1/L.10.

6. Mr. YBAÑEZ (Spain) agreed with the representative of the Soviet Union that the addition of greater detail tended to reduce the force of a text. Since it was impossible to cover all eventualities, the Committee should keep to the more general wording.

7. Mr. ERSAVCI (Turkey) endorsed the views expressed by the Soviet Union representative and agreed with the previous speakers that the agreed text of paragraph 3(f) bis covered all the relevant cases.

8. Mr. PAIXAO (Argentina) said that he could accept the Chairman's suggestion, which would have the effect of extending the protection offered to schoolchildren to such places as tourist areas.

3rd meeting
Tuesday, 29 November 1988, at 10.15 a.m.

Chairman: Mr. POLIMENI (Italy)
9. Mr. ALLAGUI (Tunisia) said that the term “schoolchildren” should be replaced by “young people”.

10. Mr. PAIXAO (Argentina) suggested that the term “schoolchildren” might perhaps be replaced by the word “students”, used in a general sense.

11. Mr. BRUCE (Ghana) supported the use of the term “students”, which would cover children at primary, secondary and university levels.

12. Mr. AL-NOWAISER (Saudi Arabia) considered that the text of new paragraph 3(f) bis agreed at the previous meeting covered all the concerns that had been voiced.

13. Mr. ALLAGUI (Tunisia) pointed out that the use of the expression “out-of-school activities” would restrict the provision’s coverage to children who attended scholastic institutions. It would be preferable for it to refer to social or cultural centres or places where sporting activities took place.

14. Mr. YBAÑEZ (Spain) said he fully agreed with the representative of Tunisia; the major concern was that young people, whether or not they were studying, were becoming the victims of drug traffickers and a text was needed that would protect them wherever they were and whatever they were doing.

15. Mr. SCHUTTE (Netherlands) said the wording now being considered was much too broad; it was hard to imagine a place or area where students did not carry on activities of some type.

16. Mr. BOUCETTA (Morocco) suggested combining subparagraphs (f) bis and the proposed subparagraph (f) ter in the following manner: “The victimization or use of minors or the fact that the offence is committed in an educational, sports or social institution or in their immediate vicinity”.

17. Mr. MEYER (United States of America) said his delegation shared the views expressed by the representatives of the Netherlands and the Soviet Union.

18. Mr. PAIXAO (Argentina) said the Moroccan proposal would extend the convention’s coverage to groups of young people involved in certain types of activities. As such, it certainly encompassed the highly vulnerable area represented by the educational system. The question to be resolved now was whether the convention’s coverage should be extended still further, to young people in general, as suggested by the representative of Tunisia.

19. Mr. GONZALEZ (Chile) said that the Committee’s objective should be to incorporate language in the convention that would be spelt out later in national legislation. The version of subparagraph (f) bis agreed at the previous meeting had the merit of being simple and precise and covered three areas where special protection was needed. The proposal for a subparagraph (f) ter did not improve the text of the draft. He urged the Committee to keep to the general formulation it had already decided on.

20. Mr. EDWARDS (United Kingdom) agreed with the Netherlands representative that the revision of subparagraph (f) bis suggested by the Chairman made the coverage of the subparagraph inordinately wide; potentially it would encompass all places where children and students were located. Yet it was necessary to take account of the fact that school and university activities often took place beyond the vicinity of schools and colleges. He therefore suggested the addition to the agreed text of subparagraph (f) bis of the words “or in other places to which schoolchildren and students resort for educational, sports and social activities”.

21. Ms. HUSSEIN (Malaysia) said that her delegation could accept a formulation which emphasized locations, but not the inclusion in the draft of the proposed new subparagraph (f) ter, which did nothing to clarify the situation.

22. Mr. YBAÑEZ (Spain) said he understood the desire to enumerate the places where protection against drug trafficking should be provided, rather than to identify the individuals that needed to be protected. It was extremely difficult to define the vulnerable group: the term “minors”, for example, had different meanings in different legal systems. One of the most shocking things about drug trafficking was that when young people fell victim to it, they were often engaged in worthwhile activities such as studying, working or playing sports. He felt, nevertheless, that the location of the offence was of secondary importance: it was the individuals who were victimized that must be emphasized in the convention.

23. Mrs. PUGLISI (Italy) said she firmly believed a reference to out-of-school activities should appear in subparagraph (f) bis, either in specific terms, as in the United Kingdom proposal, or more generally. She agreed with the Spanish representative that the crucial aspect of the matter was the people affected by drug trafficking.

24. Mr. AL-AJMI (Kuwait) said the purpose of subparagraph (f) bis was to lay down a general provision. He favoured a reference in it to offences committed in places, however described, that were frequented by young people.

25. Mr. MEYER (United States of America) said that he would prefer the text to remain general and not to contain references to particular areas where an offence took place. However, if a consensus was reached on a different kind of formulation, he would not oppose it.

26. Mr. LAVIDIA (Philippines) said that the Committee’s prior decisions on subparagraphs (f) and (f) bis must be respected.

27. Mr. SZEKELEY (Mexico) said that the work so far accomplished on paragraph 3 must certainly be preserved. Having consulted with the other sponsors of subparagraph (f) ter, he was glad to say that his delegation and theirs could accept the United Kingdom proposal.

28. The CHAIRMAN invited the Committee to approve the addition to subparagraph (f) bis of the words proposed by the United Kingdom.
29. It was so decided.

30. Article 2, paragraph 3, as a whole, as amended, was approved.

Paragraph 1 (E/CONF.82/C.1/L.3-6)

31. Mr. DUFT (German Democratic Republic), introducing the version of article 2, paragraph 1, proposed in document E/CONF.82/C.1/L.3, said that the purpose of the proposal was to simplify the complicated structure of the paragraph as proposed in document E/CONF.82/3 and so make it clearer and more effective. The proposal also removed the proviso about constitutional limitations in subparagraph (b) of the existing text. The modes of commission of the illicit traffic offences specified in the existing text had great similarities and could be combined to advantage in a single subdivided subparagraph. Moreover, the existing subparagraph 1(b)(ii) was meant to refer not only to subparagraph 1(b) but to paragraph 1 as a whole. His delegation's proposal therefore combined the provisions of subparagraphs (a)(ii) and (b)(ii) on the one hand and those of subparagraphs (a)(iii) and (b)(i) on the other, thus bringing together descriptions of those offences which belonged together.

32. Mr. SCHUTTE (Netherlands), introducing the version of paragraph 1 and the new paragraph 1 bis proposed in document E/CONF.82/C.1/L.4, said that it had been prompted by the fact that the notion of illicit traffic still had to be defined. His delegation was not convinced that the definition in article 1 was necessarily the one which should completely cover the scope of application of article 2. The newly attempted description of the notion of illicit traffic was embodied in the proposed subparagraphs 1(a)(i), (ii) and (iv). The fact that his delegation's proposal omitted a reference to illicit traffic as such should not be taken as indicating a desire for it not to be mentioned in the draft at all. On the contrary, the words "illicit traffic" should appear elsewhere in the draft.

33. It seemed advisable to follow the pattern set by the Single Convention on Narcotic Drugs, 1961, which had a definition, albeit summary, of the notion of illicit traffic in article 1 and also contained article 36 on penal provisions which did not contain the words "illicit traffic" but endeavoured to explain the notion. Broadly, his delegation's proposal took that approach. In subparagraph (a)(ii), it suggested the inclusion of the possession and purchase of narcotic drugs or psychotropic substances, but qualified that by relating it to the purpose of other activities, since it was implicit in the proposal that a Party's international obligations under article 2 should not apply to possession or purchase for personal use, a state of affairs which could be inferred from the quantity involved.

34. In subparagraph (a)(iii), which was virtually identical to the corresponding wording in the original text, his delegation had included the notion of transport of equipment or materials as a separate offence, mainly for jurisdictional reasons. There was also an explicit reference to substances in List A and List B. The notion of "knowing" did not appear in the new text but was implied in it. The introductory wording of paragraph 1 required that the offence be committed intentionally and the proposed subparagraph (a)(iii) required that the equipment or materials in question should be manufactured, transported or distributed for the purposes which the subparagraph specified. The offender must therefore have had the intention of manufacturing, transporting or distributing the equipment or materials for those purposes.

35. Subparagraph (a)(iv) of the Netherlands proposal took up an element mentioned in the last sentence of the definition of "illicit traffic" proposed in document E/CONF.82/3.

36. Subparagraph (b) of the proposal related to laundering offences in the strict sense. It differed in some respects from the existing text and was restricted to acts of concealment or disguise. The criminal element was the intentional deception of others, particularly law enforcement agencies, who had a right to know the real situation.

37. The element of conversion in the original text had been moved to subparagraph (c)(i) as part of the more general offence of handling proceeds. The scope of the notion of conversion had been widened to cover not only the proceeds of illicit traffic but proceeds from any of the offences set forth in the article. The aim was to criminalize not only concealment of specific facts regarding the origin, nature and location of the property constituting proceeds itself, but also the concealment of personal or real rights vested in such property. It seemed vital that the law enforcement authorities should be aware of any possible third party implications, including the existence of sham constructions intended to obstruct their possibilities of seizure and confiscation.

38. Subparagraph (c) of the proposal corresponded to subparagraph (b) of the basic text. The most important changes were to be found in subparagraph (c)(i). It categorized an offence—which might appropriately be called the handling of the proceeds of crime—and subdivided it into two kinds of conduct: firstly, the acquisition, possession or use of the proceeds of crime; secondly, the conversion or transfer of such proceeds. The former acts should not be qualified as criminal offences unless the handler of the property knew, from the time of receiving it, that it constituted proceeds of crime. A person committed no offence if he received the property in good faith and was informed only later of its criminal origin. However, the proposal included two exceptions to that rule: if, subsequently, that person deliberately concealed or disguised the criminal origin of the property from investigating authorities—the laundering offence under subparagraph (b); or if he subsequently used the knowledge he had acquired to make an unjustified profit, for himself or a third party, by converting the proceeds into other property or by transferring them—the second part of the handling offence in paragraph 1(c).

39. Finally, the proposal dealt with the very difficult question of knowledge of the circumstances as an element of the offences described. There was a reference to knowledge in subparagraphs (b) and (c)(i). The basic question was, how to ascertain that someone could be considered as knowing that certain property was derived from crime. It
could be assumed that the person did not need to know all the particulars of the crime committed. If it was necessary for it to be established in court that the person had actual knowledge, that would be tantamount to depending on a confession by the offender, which would obviously present insuperable evidentiary difficulties.

40. Some legal systems had incriminated acts of handling where negligence was involved; in other words, the offender was criminally liable if in the circumstances he ought to have understood that the property was of criminal origin. In other legal systems it was possible, without expressly making such negligence criminal, to infer someone's knowledge from facts other than the confession of the offender. The term *dolus eventualis* was used in this respect, but it was very difficult to draw a distinction between that and *culpa in delicto* in the abstract.

41. The proposed paragraph 1 *bis* was designed to make it clear beyond doubt that, when appraising the evidence establishing knowledge, courts should not have to depend on the confession of the offender but could rely on objective facts from which the knowledge possessed by the offender might be inferred.

42. Mr. RAO (India), introducing the version of paragraph 1 proposed in document E/CONF.82/C.1/L.6, said that article 2 was the cornerstone of the entire draft, which should be based on element (i), “Adequacy of sanctions for offences relating to drug trafficking”, recommended by the Commission on Narcotic Drugs in resolution 1 (S-IX) for inclusion in the initial draft of the convention under consideration, and on target 22, “Adequacy and efficacy of penal provisions” of the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking in June 1987. The Outline also contained guidelines for harmonizing sentencing practices and penal prosecutions concerning illicit traffic.

43. His delegation’s proposal took account of experience gained in the application of articles 36 and 22 of the Single Convention on Narcotic Drugs, 1961 and the Convention on Psychotropic Substances, 1971 respectively. The proposal attempted a brief but precise formulation of article 2, paragraph 1. Another reason for it was that the paragraph as proposed in the basic text seemed to distinguish in treatment between the offences which called for mandatory action. Some of those specified in subparagraph (b) were more serious than offences mentioned in subparagraph (a); for example, participation in conspiracy involved the very brains behind trafficking offences and should be dealt with just as severely as the offences specified in subparagraph (a). Another reason why subparagraphs (a) and (b) had been merged in his delegation’s proposal was that subparagraph (a)(iii), for example, dealt with concealment, disguise and conversion, which surely presupposed acquisition, possession or use, as set out in the existing subparagraph (b)(i).

44. The Committee would recall that the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs had provided for very serious punishment of certain offences, such as attempts and certain preparatory acts, which were regulated in subparagraph (b) and not subparagraph (a) of article 2, paragraph 1, proposed in the basic text. Article 36 of the Single Convention on Narcotic Drugs, 1961 also treated as serious offences intentional participation in, conspiracy to commit and attempts to commit such offences and preparatory acts and financial operations connected with them. The draft under discussion should do nothing to dilute the seriousness of offences described in earlier conventions, particularly since the new convention was meant to make international penal provisions stronger than before.

45. His delegation’s proposal was based on the assumption that the term “illicit traffic” which it used would include the substances enumerated in List A and List B of draft article 8.

46. Mr. SZEKELY (Mexico), referring to his delegation’s proposal concerning article 2, paragraph 1 (E/CONF.82/3, annex IV, p. 108), said that the text proposed by Mexico for the introductory wording had been designed to assist the rapid implementation of the convention. It had been interpreted as an attempt to weaken the draft, but that was not its intention. It removed the obligation to adopt measures of the kind which the paragraph specified, since the requirement to do so might deter countries which had yet to adopt such measures under their national legislation from accepting the new convention speedily. That could lead to a situation in which there were insufficient countries ratifying the convention for it to come into effect at an early date. In view of the misunderstanding about his delegation’s intentions, it withdrew that part of its proposal.

47. Before turning to the part of the proposal which dealt with subparagraph (a)(iv), he wished to propose in addition the deletion of the introductory wording to subparagraph (b). His delegation felt that the introductory wording to paragraph 1 as a whole should apply to the contents of both subparagraphs. As a result, there was no need for a separate subparagraph (b). Its existence created the false impression that the obligation for which paragraph 1 provided related solely to the points in subparagraph (a), which might therefore be seen to have a different status from those mentioned in subparagraph (b); or that the treatment of the latter was open to discretion. Quite apart from that, his delegation was unsure of the meaning of the words “subject to its constitutional limitations, legal system and domestic law”. It would be best to delete the introductory wording to subparagraph (b) and set out all the offences in a single list.

48. The purpose of his delegation’s proposal for an additional offence, numbered “(a)(iv)” in document E/CONF.82/3, was to require States to penalize under their domestic laws any acts of publicity or overt encouragement which might induce persons to participate in any aspect of illicit drug trafficking. Such activities were deeply inimical to the interests of society and public health and must be targeted as part of the international community’s campaign to eradicate drug abuse. The proposed text would form part of the single list of offences.
49. Illicit traffic should, he thought, be defined comprehensively, and to that extent he could accept the proposal submitted by the Netherlands.

50. The CHAIRMAN observed that in the pre-conference consultations it had been agreed that definitions of the notions employed in the convention should appear in the substantive articles dealing with them. On that basis, a definition of "illicit traffic" should appear in article 2 if the text proposed in document E/CONF.82/3 was accepted. That would not be necessary if the Netherlands proposal was preferred.

51. Mr. KATHOLNIGG (Federal Republic of Germany) referred to the amendment to the Netherlands proposal (E/CONF.82/C.1/L.4) submitted by his delegation in document E/CONF.82/C.1/L.5. He explained that he was in substantial agreement with the text proposed by the Netherlands, but thought that the changes suggested by his own delegation dealt more satisfactorily with the origin of acts of laundering. For example, there was no reason why laundering offences should be related to the manufacture of equipment and materials as specified in paragraph 1(a)(iii) of the Netherlands proposal if such manufacture was mainly licit, because in that case the manufacturer would be unlikely to launder his profits.

52. In regard to the question of defining "illicit traffic", he had some preference for the Netherlands solution, which offered a flexible description of the relevant offences. If the wording proposed by the Netherlands for paragraph 1(a)(i) was accepted, it was immaterial whether a formal definition of the term appeared elsewhere in the draft. As to the question of the existing introductory wording to paragraph 1(b), which appeared as paragraph 1(c) in the Netherlands proposal, that so-called "safeguard clause" was the result of a compromise in the Review Group on the draft convention and reflected the difficulty of incorporating all the relevant offences in the domestic laws of all Parties. States should not be compelled to adopt terminology peculiar to a single system of law; for example, the term "conspiracy" was a common law concept unknown in civil law systems.

53. Mr. CAPEK (Czechoslovakia) said that the proposal submitted by the German Democratic Republic had considerable merit. The question of defining "illicit traffic" would best be discussed in the context of article 1.

54. Mr. LOW MURTRA (Colombia) expressed his delegation's concern regarding the "safeguard clause" represented by the existing paragraph 1(b). Every international convention created a supranational legal framework, whereby the signatories renounced their right to establish an alternative legal framework under domestic laws. The future contracting parties to the convention would be committing themselves to the adoption of appropriate legislation to incorporate into domestic law the legal norms enshrined in the convention. The amendment proposed by the Netherlands was admirable in its enumeration of offences, but its drawback was that it maintained the safeguard clause, which he would prefer to see eliminated. He supported the proposal by Mexico for a single list of offences and for the addition of an offence consisting of publicizing and encouraging drug abuse. All aspects of the problem of drug abuse must be addressed by the future convention.

55. Mr. SUN Lin (China) said that the illicit traffic referred to in article 1, paragraph 1, was closely related to the offences specified in article 2. Both elements were crucial to the scope and framework of the convention. Two approaches were possible: one was to expand the existing definition of illicit traffic and the other was to present a list of specified offences in article 2. He believed that the draft should specify an appropriate range of offences for the sake of eradicating all the acts concerned and eliminating any possible loopholes. He also believed that the convention should draw a clear distinction between criminal acts and acts which were merely infringements of relevant laws and regulations. The sanctions contemplated in the convention, such as extradition, must be appropriate to the offences. He suggested the formation of a working group to deal with the various proposals for article 2, paragraph 1, now before the Committee.

56. Mr. BAEYENS (France) reminded the Committee that the Review Group had thought it preferable to leave the term "illicit traffic" undefined in paragraph 1(a)(i). If a definition was nevertheless felt to be necessary at that point in the text, he would opt for the wording used in article 36 of the 1961 Convention. As for the reservation in paragraph 1(b), he entirely agreed that it was undesirable.

57. Mr. LAVIÑA (Philippines) said that a bewildering variety of alternatives was now proposed for article 2, paragraph 1. In view of the importance of that paragraph, he endorsed the suggestion of the representative of China that a working group should be established to consider the various proposals for it which were before the Committee. He opposed the inclusion of the safeguard clause represented by paragraph 1(b); there was no place for it in the convention, as the representative of Colombia had explained.

58. The CHAIRMAN asked the Committee whether it accepted the proposal to submit the text of article 2, paragraph 1, to a working group.

59. It was so decided.

The meeting rose at 1 p.m.
CONSIDERATION OF A DRAFT CONVENTION
AGAINST ILLICIT TRAFFIC IN NARCOTIC
DRUGS AND PSYCHOTROPIC SUBSTANCES
(agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 (continued)

Paragraph 1 (continued) (E/CONF.82/C.1/L.3, L.4, L.6)

1. Mr. POPOV (Bulgaria) suggested in the interest of
economy of text, that the convention should refer in its
provisions simply to "illicit traffic", rather than to "illicit
traffic in narcotic drugs and psychotropic substances". The
title of the proposed convention contained the necessary
definition of the traffic involved.

2. In his delegation's view the draft substantive articles
in document E/CONF.82/3 were in principle acceptable.
They needed only a small measure of improvement from
the legal and stylistic standpoint and perhaps some minor
redrafting.

3. Ms. PUGLISI (Italy) said that it would be useful to
have a clear description of the categories of activities
to be regarded as offences and in that connection she
saw considerable merit in the Netherlands amendment
(E/CONF.82/C.1/L.4). She was in favour of retaining the
safeguard clause in paragraph 1(b) since, far from weak­
ening the Convention by subordinating its rules to national
legislation, it would enable a number of States to accept
the Convention which might not otherwise be able to do
so. She was also in favour of the reference to propaganda
and publicity in the Mexican proposal (E/CONF.82/3,
page 108) being included in the list of offences.

4. Mr. de la GUARDIA (Argentina) said that the pri­
mary goal of the Conference should be to draw up an
effective convention. If there had to be safeguards to
cover the legal systems and traditions of individual coun­
tries, those safeguards should be limited in scope. The
Netherlands proposal (E/CONF.82/C.1/L.4) divided offe­
ces into two groups, four categories of offences without
safeguards and three categories of offences with safe­
guards, while the amendment of the German Democratic
Republic (E/CONF.82/C.1/L.3) reduced the list of offe­
ces to four categories, all without safeguards. He stressed,
however, that the text of article 1 in the draft convention
was already the result of a compromise. If the consensus
view of the Committee was that the compromise should be
maintained, he would prefer to see the safeguards limited
and the reference to domestic law in paragraph 1(b) de­
leted, since the aim should be to promote the reform of
domestic law rather than to regard it as sacrosanct.

5. Certain amendments called for a definition of illicit
traffic in article 2, to be valid for article 2 only. That, in
his view, could lead to confusion; the definition should
remain in article 1 and should be valid for the entire
convention.

6. Mr. EDWARDS (United Kingdom) welcomed the
flexible attitude adopted by the representative of Mexico
in withdrawing the introductory part of article 2, para­
graph 1, in his delegation's proposal (E/CONF.82/3,
page 108). His delegation could accept the Netherlands
amendment (E/CONF.82/C.1/L.4), subject to certain draft­
changes. The question of the definition of illicit traffic
should, in his view, be considered only later. It would be
unfortunate to eliminate the safeguard clause altogether,
since it would be inappropriate to impose on States obli­
gations incompatible with their legal system, with the
result that a number of countries would be unable to
accept the convention at all. Consideration should rather
be given to what changes in domestic law might be re­
quired. His delegation supported the inclusion in the cate­
gory of offences of inducement or incitement of others, by
any means, to participate in illicit traffic.

7. Mrs. KATHREIN (Austria) supported the Netherlands
amendment (E/CONF.82/C.1/L.4) as far as the enumera­
tion of offences was concerned. She felt that some wording
of paragraph 1(b) of the Netherlands proposal was
required. Austria strongly opposed the elimination of safe­
guard clauses. The offences listed in the convention
had in due course to be included in the category of offe­
ces under domestic law. In principle, no unnecessary
changes should be made to the draft convention in docu­
ment E/CONF.82/3.

8. Mr. AL-ALSHEIKH (Saudi Arabia) said that article
2, paragraph 1, should simply list the offences to be
established under national criminal law. It was not, how­
ever, necessary to describe the offences in detail. That was
the function of domestic legal systems and should be
left to the discretion of individual countries. Paragraph 1
should, in his view, also make a reference to criminal
behaviour. For example, an attempt to commit an offence
might be assimilated to the offence and included in the
relevant definition.

9. He considered it necessary to specify in para­
graph 1(a)(i) what type of illicit traffic was meant, namely
traffic in narcotic drugs and psychotropic substances. It
would be necessary, at the domestic law stage, to specify
the different grounds for establishing offences in regard to
the use of equipment, manufacturing processes, etc. When
considering the offences listed in article 2, it was impor­
tant to take into account criminal intent.

10. Mr. FOFANA (Senegal) welcomed the significant
advance which had been made in expanding the scope of
the offences to be established in connection with drug trafficking. The list of offences proposed in the Netherlands amendment (E/CONF.82/C.1/L.4) was, however, very far-reaching and detailed. His delegation was in favour of eliminating safeguard clauses where possible, retaining them, however, in all essential cases.

11. Mr. RAO (India), clarifying the amendment submitted by his delegation (E/CONF.82/C.1/L.6), said that reference had been made deliberately to national law rather than criminal law. It was necessary to make reference to pecuniary sanctions, which could be imposed by authorities other than the criminal courts.

**Paragraph 3 (bis) (continued)**

12. Mr. WELLS (Australia) said that, following consultations, the delegations of Argentina, Austria, Botswana, Canada, Colombia, Federal Republic of Germany, France, India, Mexico, the United Kingdom and the United States of America had reached agreement on a common text which they proposed for article 3 bis. The delegations of Bolivia and the Philippines were still considering certain points of drafting before associating themselves with the text, which read as follows:

> “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.”

13. Mr. SZEKELEY (Mexico) said his delegation regretted that the sponsors of the proposed paragraph 3 bis had been unable to agree on stronger language. The provision was intended to combat the scourge of traffickers who were returned to the streets as a result of judicial or extrajudicial concessions.

14. The purpose of the original Mexican proposal (E/CONF.82/3, page 109) had been to rule out altogether the exercise of discretionary powers for the benefit of the offenders in question. A number of other delegations had been unable to go that far because of considerations related to their own legal systems. In a realistic spirit, his own delegation had shown flexibility and had agreed to accept the text read out by the Australian representative. It earnestly hoped that the provisions of draft paragraph 3 bis would be applied in good faith so as to maximize the effectiveness of law enforcement measures.

15. Mr. OSTROVSKI (Union of Soviet Socialist Republics) congratulated the delegations which had submitted a common text for paragraph 3 bis and requested that it should be circulated in writing in the languages of the Conference before a decision was taken on it.

16. The CHAIRMAN said that that would be done.

17. Mr. LAVIÑA (Philippines) said that he shared the regret of the Mexican representative at the fact that the main element in the original Mexican proposal had not been incorporated in the common text. An opportunity had been missed to exercise political will and to show the international community that the Conference was in earnest in its desire to ensure effective suppression of illicit traffic. His delegation was nevertheless prepared to support the common text agreed upon.

18. Mr. van CAPELLE (Netherlands) said that the purpose of the Conference was not to manifest political will but rather to draw up an international instrument which would help in the suppression of illicit traffic. In that process, it was sometimes necessary to let small fish get away in order to catch big ones.

19. Mr. SZEKELEY (Mexico) said that he disagreed with the previous speaker on both points. Countries such as his own were faced with the plague of battalions of drug peddlers. Hence his resolute opposition to all kinds of procedural and extraprocedural arrangements for the benefit of drug traffickers. Also, he felt strongly that it was necessary to exercise political will in the matter.

**Paragraph 4**

20. Mr. WELLS (Australia) recalled the useful suggestion made by the Indian delegation to use the expression “courts or other competent authorities” in the introductory part of paragraph 3. That language took into account the possibility that a matter might be decided by authorities other than courts. A similar problem arose in connection with paragraph 4, since in some countries early release or parole were granted by parole boards or police tribunals. He therefore proposed that the opening words of paragraph 4: “The Parties shall bear in mind” should be amended to read: “The Parties shall ensure that the courts or other competent authorities bear in mind”.

21. Mr. SZEKELEY (Mexico) said that his delegation had earlier proposed the complete deletion of paragraph 4. The intention of the paragraph was perhaps commendable, the idea being that the serious nature of the offences should be borne in mind when the eventuality of early release or parole was being considered. However, the drafting of the paragraph was very defective.

22. In the Mexican legal system the eventuality of early release or parole of the offenders in question was totally ruled out. His delegation would have accordingly preferred a provision which would tend to exclude parole or early release of persons convicted of the offences enumerated in article 2, paragraph 1. In view of the result of the consultations on paragraph 3 bis, however, his delegation would not press its proposal for deletion, while placing on record its position, based on Mexican law on the subject.

23. Mr. CAPEK (Czechoslovakia) said that the circumstances mentioned in subparagraphs (a) to (g) of paragraph 3 were relevant also to the question referred to in paragraph 4. He therefore suggested the insertion in paragraph 4 of the words “and the circumstances enumerated in paragraph 3” immediately after the words “enumerated in paragraph 1”.

24. Mr. MUÑOZ MALAVER (Peru) said that his delegation supported the original Mexican proposal for deletion and was prepared to take it up.
25. Mr. RAO (India) said that paragraph 4 did not deal with the question of release on bail before trial. The Division of Narcotic Drugs had drawn attention in 1987 to the fact that drug traffickers had large sums of money available for bail payment purposes to obtain release. He therefore suggested that the words “letting the arrested person out on bail” should be inserted in paragraph 4 after the words “the eventuality of”.

26. Ms. VOLZ (United States of America) said that her delegation could accept the proposal of Australia. It was neutral with regard to the Czechoslovak proposal. As for the suggestion made by the Indian representative, paragraph 6 would seem to be a better place to deal with the question of release on bail.

27. Mr. RAO (India) withdrew his suggestion on the understanding that the matter would be dealt with in paragraph 6.

28. Mr. van CAPELLE (Netherlands) supported the remarks of the representatives of Australia and the United States.

29. Mr. EDWARDS (United Kingdom) said that his delegation’s position was similar to that of the United States.

30. Mr. LAVIÑA (Philippines) said that the text of paragraph 4 should be left unchanged. His delegation did not favour introducing the words “courts or other competent authorities”. It was for each State party to allocate their functions to its various authorities.

31. Mr. POPOV (Bulgaria) supported the Australian amendment. He also supported the Czechoslovak amendment which drew attention to the fact that the crimes mentioned in paragraph 3 were no less serious than those mentioned in paragraph 1.

32. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee agreed to approve paragraph 4, amended as proposed by Australia and Czechoslovakia.

33. It was so decided.

Paragraph 5 (E/CONF.82/C.1/L.7/Rev.1)

34. Mr. SZEKELY (Mexico) introduced the amendment proposed by his delegation and that of Canada (E/CONF.82/C.1/L.7/Rev.1), which had been the subject of consultations with other delegations. Its purpose was to strengthen the original draft text in the interest of the convention as a whole. He pointed out that there was a great deal of variation between countries as far as statutes of limitation applicable to drug trafficking offences were concerned: some countries had no such statutes, while in others the provisions were very strict. The first sentence of the joint amendment was an attempt to compromise between those extremes. Furthermore, because illicit trafficking in drugs was to a large extent international, a second sentence had been added with the aim of discouraging the flight of offenders across borders. Since the total abolition of any statute of limitations in the case of drug trafficking offences remained, at least for the present, only an ideal, he hoped that the Committee would, in the meantime, approve what he considered a very modest proposal.

35. Mr. AL-OZAIR (Yemen) said that the text of the joint amendment was fully consonant with the aims of the draft convention. All countries should be called on to enact legislation which would ban illicit traffic in drugs and to put an end to any statute of limitations applicable to drug trafficking offences.

36. Mr. de la GUARDIA (Argentina) said that the amendment was a considerable improvement on the original draft of paragraph 5. His delegation therefore supported it.

37. Mr. BAŸEYENS (France) suggested, in order to take account of the diversity of legal systems, that the first part of the joint amendment be modified to read “the Parties shall endeavour to establish, where appropriate, strict provisions . . . .”.

38. Mr. RAO (India) said that if the proposed paragraph began with the words “Each Party shall establish, wherever necessary, or wherever appropriate, strict provisions . . . .”, the case of the many countries in which there was no statute of limitations applicable to criminal offences would be taken into account.

39. Ms. VOLZ (United States of America) observed that in the context of paragraph 5, the word “strict”, by being interpreted in its limitative sense, might have an effect opposite to that presumably desired by the authors of the joint proposal. She had no difficulty with the intent of the proposal, but would prefer that it be reworded to embrace the original concept of adequate provisions, or perhaps of an applicable statute of limitations.

40. Mr. AL-ALSHEIKH (Saudi Arabia) said that as the representative of a country whose legal system had no statute of limitations, he would have serious reservations concerning the inclusion of the proposed paragraph in the draft convention.

41. Mr. LAVIÑA (Philippines) submitted that the first sentence of the joint amendment would, precisely, cure or correct the situation of Parties which did not at present have a statute of limitations, by encouraging them to take the strong measures that were required to combat drug trafficking.

42. Regarding the use of the word “strict”, he considered that where ambiguity might exist, i.e. in the first sentence of the joint proposal, the word could be deleted. In the second sentence, however, the use of the word “stricter” could give rise to no misunderstanding and the word should therefore be retained. His delegation was opposed to the inclusion in the paragraph of any qualifications, such as “wherever appropriate” or “wherever necessary”, which would modify its significance, or even render the provisions meaningless by opening the door to non-application.
43. Mr. de la GUARDIA (Argentina) suggested that the significance of the proposal would be maintained, and the ambiguity alluded to removed, if the adjective "strict" was replaced by "severe".

44. Mr. LOW MURTRA (Colombia) said that the text of the joint amendment usefully strengthened what had been an excessively innocuous original draft. He agreed with the previous speaker that the word "severe" might be substituted for "strict", and concurred with the representative of Mexico that the ultimate aim should be to eliminate statutes of limitations applicable to drug-related offences where they continued to exist.

45. Mr. OSTROVSKI (Union of Soviet Socialist Republics) found the new text proposed quite acceptable. He pointed out, however, that, at least as far as the Russian version was concerned, the notion of setting obstacles in the way of prosecution evoked in its final phrase seemed inappropriate: an offender could scarcely be expected to facilitate prosecution. He would prefer that part of the proposal to be reworded to the effect that the provisions in question should be made stricter if the offender fled the territory of a Party, and thereby evaded the administration of justice.

46. Mr. MADDEN (Jamaica) said that apart from the possible ambiguity of the word "strict", the proposal before the Committee presented for him another problem. As had been pointed out, a number of countries did not have a statute of limitations with respect to the prosecution of criminal offences. Various considerations were simply taken into account, on a case-by-case basis, when deciding whether or not to prosecute some time after the alleged offence had been committed. Were there still reliable witnesses, for example? Was there still evidence? Was there a reasonable chance of securing a conviction? He feared that the somewhat mandatory tone of the paragraph, with the injunction "shall", might be counterproductive, provoking resistance in certain countries and tying the hands of those which had never found it necessary to establish a statute of limitations. For those reasons, he considered that the proposal should be approached with caution.

47. Mr. van CAPELLE (Netherlands) shared the concern expressed by the representatives of Saudi Arabia and Jamaica as far as the case of countries which did not have statutes of limitations were concerned. The joint amendment could also pose problems for countries which did have such statutes, and which wished to be as careful as possible when taking decisions involving the rights of defendants. His delegation had the same reservations concerning the proposal of Mexico and Canada as it had had with regard to the original draft of paragraph 5.

48. Mr. POPOV (Bulgaria) said that he fully endorsed the remarks of the previous speaker.

49. MR. LEE (Canada) suggested, subject to the agreement of the co-author of the proposal in document E/CONF.82/C.1/L.7/Rev.1, that the concerns expressed and the alterations to the text proposed during the discussion might be accommodated if the proposed paragraph were to read as follows:

"5. Each Party shall establish, where appropriate, severe provisions governing the statute of limitations applicable to offences set forth in paragraph 1. Such provisions shall be made stricter if the offender evades the administration of justice of a Party, thus inhibiting prosecution."

50. The CHAIRMAN considered that it should be placed on record that the insertion — if accepted by the Committee — of the words "where appropriate" in the proposed text should in no sense be construed as offering Parties the opportunity of not fulfilling the obligations established by the paragraph; the qualification was merely intended to take account of cases where no improvement of the existing national measures was required. As far as the final part of the text proposed by the representative of Canada was concerned, he said it was his understanding that the representative of the USSR had suggested replacing the notion of inhibiting prosecution by that of evading the administration of justice. If that was indeed the case, the final three words of the text proposed might be deleted.

51. Mr. OSTROVSKI (Union of Soviet Socialist Republics) said he indeed believed that a reference to evasion of the administration of justice would be more in keeping with what he understood to be the intent of the proposal than a reference to placing obstacles in the way of prosecution.

52. Mr. MADDEN (Jamaica), pointing out that an offender could well evade the administration of justice without fleeing the territory of the country concerned, asked why the notion of flight had been singled out for attention in the draft submitted by Canada and Mexico.

53. He believed he understood what was signified by the terms "strict" and "severe", but neither of them satisfied him entirely. Perhaps the Committee could approve the principle, but seek another, still more appropriate adjective.

54. Mr. ABDELKRIM (Algeria) considered the proposed amendment apposite, although he believed that most countries already had relevant statutes of limitations. He would support the text read out by the representative of Canada, but would like to see it divided into two subparagraphs.

55. Mr. LIEBERT (Papua New Guinea) suggested the adjective "stringent" as a possible alternative to "strict" or "severe". He felt that reference should be made to "evasion of the administration of justice" rather than to "inhibition of prosecution", if only for the reason that, in his country's law at least, the application of a statute of limitation became effective with arrest, rather than with prosecution.

56. Ms. VOLZ (United States of America) said she believed the primary concern of the paragraph was to obtain a statute of limitations of sufficient duration to
ensure the enforcement of justice in relation to the offences involved. In her view neither "strict" nor "severe" expressed that concern in a satisfactory manner. Nor did the use of "stricter" in the second sentence of the proposal convey the notion of extension of application of the statute, which she understood to be implied.

57. Mr. EDWARDS (United Kingdom) shared the views of the previous speaker. The wording of the text must be examined in relation to the policy intended.

58. Mr. KATHOLNIGG (Federal Republic of Germany), speaking as the representative of a country which prescribed very long terms in its statute of limitations, but which did not co-ordinate those limitations with specific crimes, suggested that the second sentence of the text proposed might read: "Such provisions shall be made stricter to take into account that the offender evades the administration of justice of a Party."

59. Mr. BROUSSE (Monaco), referring to the difficulty that had been encountered with regard to the use of the word "strict" and to its replacement by "severe" in the first sentence of the proposed paragraph, suggested that since severity implied rigour, the word "stricter" in the second sentence might be replaced by "more rigorous".

60. Mr. EDWARDS (United Kingdom) suggested that the text might be further amended to read: "Each Party shall establish, where appropriate, provisions restricting the applicability of the statute of limitations to offences set forth in paragraph 1. Such provisions shall be even more restrictive if the offender evades the administration of justice of a Party."

61. The CHAIRMAN suggested that a reference to restrictions could imply that statutes of limitation might not be applicable at all. He took it that the Committee had reached a consensus as far as the substance of the paragraph was concerned. With that understanding, and with the further understanding that it might be referred to the Drafting Committee for the sole purpose of selecting an alternative to "rigorous" if that qualification were not deemed appropriate, he also took it that the Committee could agree on a text for paragraph 5 reading as follows:

"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."

Paragraph 6

62. Mr. van CAPELLE (Netherlands) said that convictions in absentia were possible under his country's legal system; it was advantageous to have that possibility when there was a link between conviction and confiscation. Paragraph 6 should therefore be deleted in the interest of flexibility.

63. Mr. BRUCE (Ghana) expressed agreement with the previous speaker.

64. The CHAIRMAN observed that the relative clause in the penultimate line indicated that the provision applied only where the person concerned could be found within the national territory. That being the case, convictions in absentia, where appropriate, remained possible.

65. Article 2, paragraph 6, was approved.

Paragraph 7 (E/CONF.82/C.1/L.9)

66. Mr. MADDEN (Jamaica), introducing his delegation's amendment (E/CONF.82/C.1/L.9), said that there had been some discussion in the Review Group as to whether the text in paragraph 7 perhaps belonged more properly in article 4. His delegation had taken the view, however, that it was a general provision which related to articles 3, 4 and 5. The last two sentences of paragraph 7 in the draft agreement reflected the discussion in the Review Group, where some participants had thought in terms of international law while others had approached the problem from the standpoint of their domestic constitutional and fundamental laws. The Jamaican amendment was based on the substance of a number of agreements on extradition and mutual legal assistance, in particular the Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth, which included provision for requests for extradition to be refused if the Party to which the request was addressed had grounds for believing that the person would be prosecuted or punished on account of his race, religion, nationality or political opinions. The Commonwealth Scheme for Mutual Legal Assistance in Criminal Matters, adopted in Zimbabwe in 1986, made reference to "substantial grounds" for believing that the person was likely to be prosecuted or punished for those reasons. The latter Scheme also made provision for the tracing of the proceeds of criminal activity and the forfeiture of assets.

67. Mr. de la GUARDIA (Argentina) said that in his delegation's view the general provisions in paragraph 7 should be in article 4 rather than in article 2, as the question of whether the type of offence to which it referred was or was not of a political nature had much to do with extradition, and should therefore be provided for in article 4. His delegation would return to the matter when article 4 was taken up. The text of draft paragraph 7 should read simply "For the purpose of co-operation between Parties under this Convention, offences established in accordance with this article shall not be considered as political or fiscal offences." The remainder of the existing text should then be deleted. Argentina considered that there was no place for protecting drug traffickers under constitutional law or under international law relating to the right of asylum.

68. Mr. BAEYENS (France) said that the proposed paragraph contained clauses, binding on the parties, designed to systematically depoliticize a type of offence. Such depoliticization ran counter to France's extradition law and to the right of asylum under its Constitution. In particular, article 5 of the Law on extradition of March 1927 stated that no one should be extradited for a political crime or for political purposes. Also, any person persecuted for his actions in favour of liberty had the right to
asylum in France under the Constitution. The systematic depoliticization of a type of offence was therefore unacceptable, and the draft paragraph should be eliminated.

69. Mr. FERRARIN (Italy) said that under the Italian Constitution there could be strictly no political extradition. Italy did not, however, wish paragraph 7 to be eliminated completely; it thought rather, that the penultimate sentence should be retained.

70. Mr. RAO (India) said that, in his view, the first three square brackets in the draft paragraph should be removed, the words "or fiscal" should be deleted and the last two bracketed sentences should also be deleted.

71. Mr. FOFAKA (Senegal) said that the provisions of the paragraph represented an attack on the right of asylum. However, it must be made impossible for drug traffickers to hide under a political cover. He therefore supported the Italian view that the paragraph should stand, the penultimate sentence being retained. He also supported the text proposed by Jamaica, particularly the reference to racial prejudice. He would have no objection to including such a text in article 2 or elsewhere.

72. Mr. VIANA de CARVALHO (Brazil) said that some provisions of the paragraph were in conflict with Brazil’s Constitution and fundamental law. His delegation would therefore like to see the paragraph deleted. If it was not deleted, the penultimate sentence should be retained.

73. Mr. van CAPELLE (Netherlands) supported the Jamaican amendment and supported also the retention in the paragraph of the words "or fiscal"; co-operation in law enforcement was sometimes refused if the State whose co-operation was requested considered the matter to be fiscal only. The State might then turn down requests for provision of such things as bank statements. Such refusals represented an important loophole where drug trafficking was involved.

74. Mr. ASSADI (Islamic Republic of Iran) said that whether the paragraph was retained in article 2 or placed elsewhere, violation of the right of asylum or questions connected with political extraditions were always matters of interpretation. His delegation understood that the purpose of the paragraph was to ensure that the offences enumerated in paragraph 1 of article 2 were not to be regarded as political or fiscal offences. In that connection, his delegation could not accept that political and fiscal crimes should be equated. It therefore proposed that the reference to fiscal offences be deleted.

75. Ms. IBRAHIM (Malaysia) said that Malaysia could support paragraph 7 only if the bracketed second line were deleted, if the words "or fiscal" were deleted and if the final two sentences were deleted.

76. Mr. LAVIÑA (Philippines) said that whether the paragraph was retained in article 2 or placed in article 4, its provisions should be kept in the convention. Some delegations appeared to have doubts about those provisions, considering that they eroded the concept of extradition. In his view, however, it was, precisely because the offences listed in article 2 were not to be treated as political or politically motivated offences that the concept of extradition would be strengthened. In that light, the reference to fiscal offences should be removed; not only did it erode the concept of extradition, it was unclear in international law, as reflected in the discussion reported in paragraph 96 of document E/CONF.82/3. He therefore supported the Malaysian proposal that the last two sentences should be deleted. In connection with the reference in the final sentence to the "right of asylum in conformity with international law", he pointed out that not all countries recognized the right of asylum. He also supported the Jamaican amendment in principle, but considered that that text should not be placed in article 2.

77. Mr. HAHN (Federal Republic of Germany) said that paragraph 7 raised problems connected with mutual legal assistance and extradition. He therefore proposed that discussion of the text should be deferred until articles 4 and 5, dealing with those matters, were taken up by the Committee.

78. Mr. SZEKELY (Mexico) said that it was vital to include safeguards concerning the right of asylum, regardless of the location of the provision in the convention.

79. The CHAIRMAN suggested that, in order to facilitate discussion, the provisions of paragraph 7 should be considered separately under the articles dealing with the various matters to which the paragraph referred. He drew attention to the fact that the Jamaican amendment (E/CONF.82/C.1/L.9) made reference only to articles 3, 4 and 5. He noted, incidentally, that the question of forfeiture of assets where political offences were involved did not normally seem to be covered by national legislation.

80. Mr. WELLS (Australia) said that the major stumbling blocks appeared to be the questions of extradition and the right of asylum, which were dealt with in article 4. He therefore proposed that those aspects of paragraph 7 which were related to article 4 should be discussed when the Committee took up article 4, but that the discussion of aspects related to articles 3, 5 and 6 should be continued.

81. It was so agreed.

The meeting rose at 6.05 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 (continued)

Paragraph 7 (continued) (E/CONF.82/C.1/L.9)

1. The CHAIRMAN said that the Committee had still to decide whether the text should include a reference to fiscal offences and whether it should embody a safeguard clause referring to the constitutional limitations of the Parties. Paragraph 7 did of course cover all forms of co-operation between Parties under the convention, and especially co-operation under articles 3, 4, 5 and 6. Objections had been raised to the idea that the paragraph should link fiscal and political offences, which were very different in nature, but there was a normative purpose in it doing so, since fiscal offences were sometimes excluded from judicial or legal measures of co-operation.

2. Mr. LAVIÑA (Philippines) expressed his delegation's willingness to reconsider its position on paragraph 7 in the light of those remarks, provided that it was understood that it did not regard fiscal offences as falling into the same category as political offences.

3. Mr. WELLS (Australia) said that fiscal offences as such fell into a category justifying the refusal of mutual assistance under the convention. In his understanding, it was because of the disparity among national laws in revenue and customs matters that mutual assistance in the enforcement of foreign civil judgements was not given in such matters. There was no such difficulty, however, with the financial offences connected with drug trafficking, such as laundering, which would be proscribed under the convention. It was already agreed that such offences would not be treated by any country as fiscal offences, nor would mutual assistance be withheld in respect of them. The reference to fiscal offences in paragraph 7 should therefore appear in the text.

4. Mr. van CAPELLE (Netherlands) agreed. The issue raised by the Philippines related to the extradition of persons; there was no disagreement, however, on the question of co-operation for the purpose of tracing, freezing and confiscating the proceeds of drug trafficking.

5. The CHAIRMAN noted that the Committee appeared to favour including a reference to fiscal offences in paragraph 7.

6. It was so agreed.

7. The CHAIRMAN asked whether the Committee wished the paragraph to include a safeguard clause referring to constitutional limitations and the fundamental domestic law of the Parties.

8. It was so agreed.

9. Mr. LAVIÑA (Philippines) said that the proviso concerning constitutional limitations might usefully form part of the first sentence of the paragraph.

10. The CHAIRMAN drew attention to the proposal submitted by Jamaica (E/CONF.82/C.1/L.9), which concerned the right of asylum. He asked the Committee whether it wished to include a reference to the right of asylum in paragraph 7.

11. Mr. BAЕYENS (France) said that if the Committee agreed to include that reference, it might usefully be combined with the references to constitutional limitations and the fundamental domestic law of the Parties. The paragraph would then read as follows:

“For the purpose of co-operation between Parties under this Convention, including, in particular, co-operation 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 be regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties and to the institution of the right of asylum in conformity with international law”.

Personally, however, he felt that a reference to the right of asylum might be more appropriate in article 4.

12. Mr. STEWART (United States of America) said that there was no need to include a reference to the right of asylum in paragraph 7 since it was relevant only to the extradition measures proposed in article 4.

13. Mr. PAREJO GONZALEZ (Colombia) agreed. His delegation might comment later on the associated questions of asylum and extradition.

14. Mr. KAPELRUD (Norway) said that his delegation might wish to return to the questions of the right of asylum and politically motivated offences at a later stage.

15. Mr. MADDEN (Jamaica) said that his delegation's proposal could equally well be dealt with under article 4.

16. Mr. YBANEZ (Spain) suggested that the question of a reference to the right of asylum should be dealt with under article 4.

17. It was so agreed.
18. The CHAIRMAN asked the Committee if it agreed the following version of paragraph 7, which would result from deleting the square brackets from the text of the first two sentences of the paragraph as proposed in document E/CONF.82/3 and combining those sentences in the manner proposed by France, without any reference to the right of asylum:

"For the purpose of co-operation between Par­ties under this Convention, including, in particular, co-operation 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 be regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties".

19. It was so decided.

Paragraph 8

20. Mr. GONZALEZ FELIX (Mexico) said that the basic text of paragraph 8 reflected the text proposed by his delegation as article 2, paragraph 7 (document E/CONF.82/3, p. 109) except that it omitted the words "investigated" and "tried". The word "typification", a literal rendering of the original Spanish of the Mexican proposal, was translated more appropriately as "description" in the basic text.

21. Mr. GONZALEZ LOPEZ (Cuba) favoured the Mexican version of paragraph 8.

22. The CHAIRMAN invited the Committee to accept the Mexican proposal for article 2, paragraph 8.

23. It was so agreed.

Paragraph 5 (continued)

24. Mr. GROENBERG (Finland) reserved the position of the Nordic countries with regard to the last sentence of article 2, paragraph 5.

New paragraph 3 bis (continued) (E/CONF.82/C.1/L.14)

25. Mr. OSTROVSKI (Union of Soviet Socialist Repub­lics) asked if the sponsors of the proposal in document E/CONF.82/C.1/L.14 could explain the meaning of the expression "discretionary legal powers", to enable him to decide whether the proposed text could be applied to the Soviet judicial system.

26. Mr. GONZALEZ FELIX (Mexico) said that the text proposed by his delegation (document E/CONF.82/3, p. 109) had essentially the same purpose as the proposal in document E/CONF.82/C.1/L.14, namely to ensure that the offences concerned were prosecuted to the maximum extent. No limits were set to the discretionary legal powers of judicial or administrative authorities for that purpose.

27. Mr. SUCHARIKUL (Thailand) said that the words "those involved" at the end of the proposed paragraph 3 bis were confusing and should be replaced by "those crimes" or "those criminals".

28. Mr. LAVIÑA (Philippines) said that the meaning of the term "discretionary legal powers" might be found in the proposal by Mexico, which specified such discretionary acts as dismissal of criminal action, diminishing of charges, their modification, transaction regarding the reduction or modification of the sanction, concession of immunity or any other form of bargaining.

29. Mr. CAPEK (Czechoslovakia) said that since one of the main purposes of penal law was to deter criminals, he approved the idea of referring to the notion of deterrence in the text.

30. Mr. NAJMUDDIN (Pakistan) considered that the final phrase of the new paragraph did not state exactly what was intended. The concept of deterrence related essentially to the future, whereas the wording proposed referred to persons who had already committed an offence.

31. Mr. WELLS (Australia) agreed that the final phrase could be clarified and suggested that it should read: "with due regard to the need to deter the commission of such offences", thus placing the emphasis on deterrence in general.

32. Mr. MARTINI (Guatemala) said that the proposed paragraph 3 bis appeared to refer to three different categories of persons. First, there were potential offenders, whom it sought to deter. Second, there were those who had committed offences but had not yet been detained. There the purpose was to investigate the offence and arrest and prosecute the offender. Third, there were offenders who were already in custody and in their case the new trend in penal law towards rehabilitation should be taken into account. In his view the distinction between those three categories should be drawn more clearly.

33. Mr. van CAPELLE (Netherlands) said that one way of maximizing the effectiveness of law enforcement was by putting the greatest possible effort into fighting the most serious offences, while another consisted in the rehabilitation and resocialization of convicted persons. The latter point should not be overlooked.

34. Mr. KURAA (Egypt) said that he too had reservations about the use of the expression "those involved".

35. Mr. BROUSSE (Monaco) approved the Australian sub-amendment.

36. Mr. HAY (United Kingdom) said that as the fundamental purpose of criminal law was to deter the commission of offences, he too could support the Australian sub-amendment.

37. Mr. SUN Lin (China) also accepted the Australian sub-amendment.

38. Mr. AL-NOWaiser (Saudi Arabia) suggested that the word "national" be inserted before the term "discretionary legal powers" in order to make its meaning clearer.
39. Ms. MANDERSON-JONES (United Kingdom) said that since powers of prosecution were a matter of domestic law, the qualification proposed by Saudi Arabia was unnecessary.

40. Mr. GONZALEZ FELIX (Mexico) pointed out that the text of article 2, paragraph 8, to which the Committee had just agreed made it quite clear that offences were to be investigated, prosecuted, tried and punished in conformity with domestic law.

41. Mr. BRUCE (Ghana) said that the proposed paragraph 3 bis would assist the judicial authorities in each country in the investigation and prosecution of major drug traffickers. Once the principle embodied in the paragraph had been accepted, details of wording could be left to the Drafting Committee.

42. Mr. AL-SHARAYDA (Jordan) supported the Saudi Arabian proposal.

43. Mr. RAO (India) suggested that the text might read: "... any discretionary legal powers provided in national laws relating to ...".

44. Mr. ZURITA (Venezuela) agreed with the substance of the proposed paragraph 3 bis, but thought that its main thrust would be clearer if it began with the phrase: "With due regard to the need to deter the commission of such offences...". He thought the term "prosecution" would be more accurately rendered by "acusación" in the Spanish version.

45. Mr. MARTINI (Guatemala) said that the term "procesamiento" was more comprehensive.

46. The CHAIRMAN said that the Committee seemed ready to agree in principle to the following text for a new paragraph 3 bis to article 2:

"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."

It would be submitted to the Drafting Committee along with the editorial suggestions made by the delegates of India and Venezuela.

47. It was so agreed.

Article 3

Paragraph 1 (E/CONF.82/C.1/L.2, L.12)

48. Mr. BAILEY (Secretary of the Committee) reminded the Committee that the basic text (E/CONF.82/3, annex II) gave no title for draft article 3, whereas the amendment to the article submitted by the German Democratic Republic (E/CONF.82/C.1/L.2) was headed "Confiscation" and the Mexican proposal for it (E/CONF.82/3, annex IV) was entitled "Security measures and confiscation". The question of the title was one which the Committee had still to decide.

49. The CHAIRMAN observed that the definitions of such notions as "proceeds" and "property" also had to be considered in connection with article 3. The agreement reached on the article's structure in the open-ended intergovernmental expert group and the Review Group had been that paragraph 4 would deal with international co-operation for the purposes of confiscation and related measures, while paragraphs 1 to 3 would cover measures to be taken at the national level. He hoped that discussion on that arrangement would not be reopened.

50. Mr. DUFT (German Democratic Republic), introducing his delegation's amendment (E/CONF.82/C.1/L.2), said that in the basic text of the draft article the second sentence of the introductory wording to paragraph 1 was simply a more detailed formulation of the idea conveyed in the first sentence. There was also a certain amount of overlapping in the texts of subparagraphs (a) to (d). The purpose of his delegation's proposal was to simplify paragraph 1 by deleting the first sentence and streamlining the remainder of the paragraph.

51. Mr. RAO (India), introducing his delegation's proposal (E/CONF.82/C.1/L.12), said its purpose was to insert references in paragraph 1 and subparagraph (b) to the notions of property and forfeiture and to the substances in Lists A and B. The notion of forfeiture appeared in such recent texts on measures to combat drug trafficking as resolution 1 (S-IX) of the Commission on Narcotic Drugs and target 23 of the Comprehensive Multidisciplinary Outline, and it should appear in the draft convention as well. His delegation had suggested the addition of the term "property" at the beginning of the paragraph because it was more comprehensive than the term "proceeds". He referred in that connection to the definitions of "property" and "proceeds" in variant B and variant A respectively of the text of article 1 proposed in document E/CONF.82/3.

52. Mr. LAVIÑA (Philippines) said he welcomed the simplifying amendment proposed by the German Democratic Republic and supported the Indian proposal for incorporating references in the paragraph to forfeiture and to the substances in List A and List B.

53. Mr. BALEYENS (France) opposed the proposal by the German Democratic Republic to delete the first sentence of the introductory wording. Two different ideas were expressed in the two separate parts of that wording and both had to be expressed for the sake of balance: in one, an obligation was placed on signatory States to introduce provisions on confiscation in their legislation, while in the other, States were given a certain latitude to decide whether the measures they adopted would be mandatory or optional.

54. Mr. de la GUARDIA (Argentina) said he supported the German Democratic Republic's proposal, which greatly simplified the text without omitting any important elements. He suggested that the Drafting Committee, in considering the Spanish version of the paragraph, should render the word "proceeds" by the word "bienes".
55. Mr. GONZALEZ LOPEZ (Cuba) said that he too supported the proposal by the German Democratic Republic, which simplified the text. He suggested that it should be amended to embody the Mexican proposal (E/CONF.82/3, annex IV) for the insertion of the word "related" before the word "property" in subparagraph (a).

56. Mr. IGARASHI (Japan) said he had no objection to the German Democratic Republic's proposal but that he had difficulties with both the Mexican proposal for the insertion of the word "related" in subparagraph (a) and the Indian proposal for the incorporation of the word "property" in the introductory wording. He feared that the latter proposals would undermine the fundamental concept expressed in the structure of subparagraph (a). The subparagraph described two methods of depriving individuals who had committed an offence of the benefits that might accrue from the offence. The first course was to focus on the proceeds actually derived from the offence and to confiscate them. The second was to focus on the value of the proceeds obtained from the offence, but not on the proceeds as such, and to confiscate from the offender property which corresponded to the proceeds in value. A clear distinction was thus drawn between proceeds and property: property was not that property derived from the offence, but the property whose value corresponded to the value of the proceeds.

57. Mrs. MOLOKWU (Nigeria), referring to the German Democratic Republic's proposal, said that she favoured the structure of the introductory wording as it stood because the concepts it expressed followed logically one from the other. The Indian proposal added an element of additional precision and she supported it. She suggested the addition of the words "the commission of" before the word "offences" in the first sentence.

58. Mrs. ZABARTE (Spain) supported the proposal made by the German Democratic Republic.

59. Mr. FOFANA (Senegal) agreed with the remarks of the representative of France regarding the introductory wording. A desire to simplify the text should not lead the Committee to alter the logical structure established in paragraph 1. The first sentence of the introductory wording set out the principle that substances used in offences were liable to confiscation, while the second described the way in which that principle was to be applied by the Parties to the convention.

60. Mr. PAREJO GONZALEZ (Colombia) said that he welcomed the German Democratic Republic's proposal because it would make the paragraph simpler and more forceful. The reference to internal domestic legislation in article 3, paragraph 9, gave States the flexibility they needed.

61. Mr. GONZALEZ FELIX (Mexico) said that he agreed with the Cuban delegation's suggestion concerning the Mexican proposal.

62. Mr. GASPAR (Portugal) said that subparagraph (a) raised fundamental problems for Portugal because its constitution absolutely forbade the confiscation of property unless it was directly or indirectly acquired through criminal activities. His delegation therefore supported the Mexican proposal for subparagraph (a).

63. Mr. SEKELEMANI (Botswana) said that his delegation wholeheartedly supported the proposal by the German Democratic Republic. It did not consider that the proposal departed from the original wording in substance.

64. Mr. OUACHARIF (Morocco) said that his delegation took the view that the introductory wording of the basic text should be retained, for the reasons stated by the representatives of France and Senegal.

65. Mr. SHRESTHA (Nepal) said that his delegation supported the proposal by the German Democratic Republic. The legal system in Nepal allowed for the confiscation of property related to drug trafficking, and consequently his delegation also supported the proposal by Mexico to insert the word "related" before the reference to property in subparagraph 1(a).

66. Mr. van ITERSON (Netherlands) said that his delegation supported the proposal by the German Democratic Republic. It was a useful improvement to an important article.

67. Mr. NAJMUDDIN (Pakistan) supported the proposal by the German Democratic Republic. The new text retained the substance and intent of the original introductory wording and would make a long article a little briefer. His delegation agreed with the proposal by India to insert the word "property" before the word "proceeds". That would be in line with Pakistan's domestic law. It also agreed that the text should read "confiscation or forfeiture", since that expression would be more widely understood.

68. Mr. FERRARIN (Italy) expressed the support of his delegation for the wording proposed by the German Democratic Republic, which constituted a substantial improvement to the text. He thought it was important to spell out the meaning of the word "or" in subparagraph 1(a). In his view, it should signify an obligation for the Parties to provide for the confiscation either of proceeds or of property the value of which corresponds to that of such proceeds. The insertion of the word "related" before the word "property" as proposed by Mexico was not necessary for the purposes of Italian legislation.

69. Mr. OSTROVSKI (Union of Soviet Socialist Republics) said that many delegations seemed to favour the wording proposed by the German Democratic Republic. It did not differ in substance from the original text and his delegation too preferred it.

70. The CHAIRMAN asked the Committee if it accepted the introductory wording of paragraph 1 as proposed by the German Democratic Republic.

71. It was so decided.

72. The CHAIRMAN invited the Committee to decide on the Indian proposal to add the words "or forfeiture" after the word "confiscation" in the introductory wording.
He drew delegations' attention to the definition of the term "forfeiture" as meaning "deprivation of proceeds by court order" in variant A of the proposal in the basic text for article 1 (document E/CONF.82/3, p. 48).

73. Mr. GONZALEZ FELIX (Mexico) said that Spanish-speaking delegations were concerned about the translation into Spanish of the expression "confiscation and forfeiture", since there was only one term in Spanish for both English words. The definition of "forfeiture" in the Mexican proposal for article 1 (E/CONF.82/3, p. 106) was "definitive deprivation of proceeds by court order". The use of the word "definitive" in a definition might solve the problem.

74. The CHAIRMAN said it would be possible to use only one of the two terms in the body of the paragraph and to define it in a way which covered the notions of both forfeiture and confiscation. He suggested that the Committee might agree to use the term "confiscation" in the body of the paragraph and define it as "definitive deprivation of proceeds by court order", on the understanding that the definition covered the notion of forfeiture as well.

75. Mr. LIEBERT (Papua New Guinea) said that confiscation was not always a definitive measure. He preferred the formulation "confiscation or forfeiture".

76. Mr. ASSADI (Islamic Republic of Iran) said that in his country confiscation was the final step taken by the courts, whereas forfeiture was one step before confiscation and was not a definitive measure. His delegation therefore preferred the use of the term "confiscation".

77. Mr. RAO (India) said that in considering the notions of confiscation and forfeiture, the possibility must be borne in mind that competent authorities other than courts, such as customs authorities, could order confiscation. The definition of "seizure" in variant A of article 1 (E/CONF.82/3, p. 49) brought that out.

The meeting rose at 1 p.m.

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6th meeting

Wednesday, 30 November 1988, at 3.15 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)


1. The CHAIRMAN recalled that the Committee had agreed that the introductory part of paragraph 1 should be reduced to: "Each Party shall adopt such measures as may be necessary to enable confiscation of:", as proposed by the German Democratic Republic in its amendment (E/CONF.82/C.1/L.2). He suggested that the question whether "confiscation" should stand alone or be replaced or accompanied by the word "forfeiture" was a terminological one, as paragraph 2 of the article defined the purpose of any measures that might be necessary. If the members of the Committee were in agreement on the principle, the Committee could proceed to consider the subparagraphs of paragraph 1.

2. It was so agreed.

3. The CHAIRMAN invited the Committee to continue its discussion of whether the word "property" in the second line of subparagraph (a) should be qualified by the word "related" in accordance with the Mexican proposal in annex IV to document E/CONF.82/3.

4. Mr. BROWNING (United States of America), speaking as a member of the Expert Group, said that the latter part of the subparagraph had been intended as what was known in common law as a substitute of assets provision; the introduction of the word "related" might lead to ambiguity and restrict the scope of the subparagraph. He therefore requested an explanation of what was meant by the word "related".

5. Mr. LAVIÑA (Philippines) accepted the Chairman's indication of the agreement on the wording of the introductory paragraph, but said he had understood that the words "or forfeiture" should be included, in line with the Indian proposal. He saw a difficulty with the second part of subparagraph (a) in that if a painting worth $0.5 million were bought with the proceeds of offences and was then found to be worth $1 million, there would be a problem in determining the value. The Mexican proposal was therefore correct; property must be related. He therefore suggested that the last part of subparagraph (a) should be reworded to "or all property acquired from such proceeds". That wording should meet the concern expressed by the representative of the United States. There would be no problem as to how much of the proceeds derived from an offence should be confiscated; it would suffice for
them to have been acquired as a result of an offence for them to be confiscated.

6. The CHAIRMAN said that no decision had yet been taken concerning the inclusion of the words “or forfeiture”. Confiscation (or forfeiture) of proceeds was the final outcome of any restraining measures such as those described in paragraph 2 of the article. The question of “confiscation” versus “forfeiture” was thus in a sense a drafting matter which could be settled later. He observed that the Expert Group had not intended in the last part of subparagraph (a) to refer to property derived indirectly from offences, but rather to property which had no link with offences.

7. Mrs. JONES (United Kingdom) said that she accepted the Chairman’s explanation. She shared the reservations expressed by the United States delegation concerning the Mexican proposal to introduce the word “related”. The United Kingdom was aware that there were many different ways of recovering the proceeds of illicit traffic in drugs, and that those were matters for national legislations; whereas some legislations would track property, seizing and confiscating the direct or indirect proceeds, the method used by the United Kingdom was to assess the value of the proceeds, whether directly or indirectly acquired, and then set a monetary value. Enforcement was carried out on the basis of that monetary value, and the United Kingdom was concerned that the convention should leave enough scope for differing approaches, particularly as it would form the basis for providing mutual legal assistance.

8. The second part of subparagraph (a) was preceded by the word “or” and the provision therefore provided for differing approaches, including the substituted value approach adopted by the United Kingdom, which had proved successful over the short period it had been used. An example of the application of the substituted value approach would be that if a trafficker had ownership of a one-eighth share in a racehorse, the United Kingdom might confiscate from the trafficker’s bank account the value of that one-eighth share. United Kingdom law made provision for protection of the rights of bona fide third parties. Despite her reservations she accepted the inclusion of the word “related” in accordance with the Mexican proposal if that was a requirement for allowing the substitute value approach.

9. Mr. RAO (India) said that his understanding of the word “property” was that it was a broader concept than “proceeds”. Also, the expression “corresponds to” was too restrictive and exact. He suggested that it might be replaced by “is related to” or “is attributed to”.

10. Mr. van CAPELLE (Netherlands) said that the Netherlands wanted a firm and water-tight agreement on confiscation of the proceeds of crime. He shared the doubts expressed by the representatives of the United States and the United Kingdom concerning the introduction of concepts such as related property, property acquired from proceeds and property whose value could be attributed to proceeds. The inclusion of such terms would force law enforcement officials to spend all their time proving that money was in some way related to the crime, and would thus emasculate the convention. He therefore supported the text proposed for subparagraph (a) in the amendment submitted by the German Democratic Republic (E/CONF.82/C.1/L.2) which was a faithful reflection of the relevant decision of the open-ended intergovernmental expert group.

11. Mr. BRUCE (Ghana) considered that the paragraph should use general terms. The introduction of adjectives such as “related” would provide ammunition for any clever lawyer. His delegation accepted the amendment submitted by the German Democratic Republic in its entirety and he urged the Committee to accept it.

12. Mr. WELLS (Australia) said that the original text of subparagraphs (a) and (b) in the draft convention should be retained for the reasons given by other speakers. He thought that all aspects implicit in the introduction of the word “related” in subparagraph (a) were dealt with under article 3, paragraph 6. He therefore suggested that discussion of that point should be postponed until paragraph 6 was taken up. His delegation also considered that the introduction of the word “related” was unduly restrictive in a convention which would have to operate for decades to come. The question of “confiscation” versus “forfeiture” was addressed by the language of the introductory paragraph, which referred to “such measures as may be necessary”. The thought behind that language was that Parties would be enabled to adopt whatever measures, however described, to enable the final result of confiscation to be achieved. The introductory paragraph concentrated on the result; it was for national law to specify the means and to define the terms.

13. The CHAIRMAN drew attention to the provision in paragraph 9 of article 3 that nothing contained in the article should affect the principle that the measures to which it referred should be defined and implemented in conformity with and under the conditions established by the domestic law of a Party, and in that light asked the representative of Mexico if he could withdraw the proposal for inclusion of the word “related”.

14. Mr. GONZALEZ FELIX (Mexico) said that in the light of paragraph 8 of article 3, which stated that the provisions of the article should not be construed as prejudicing the rights of bona fide third parties, it could be seen that the spirit of the article was not to take away too much of any assets. Furthermore paragraph 9 reaffirmed the principle that any measures should be defined and implemented in conformity with the domestic law of the Parties. Consequently he withdrew the Mexican amendment to paragraph 1(a) (E/CONF.82/3, page 110).

15. The CHAIRMAN suggested that the problem of the expression “corresponds to” raised by the representative of India should be viewed in the light of paragraph 8 of the article. As a drafting problem, therefore, it could be left to the Drafting Committee. He pointed out, however, that there remained a problem in subparagraph (a) in respect of the definitions of the terms “proceeds” and “property”. He suggested that the definitions on page 49 of document E/CONF.82/3 were less suitable than the definitions
proposed by Canada and the United States in annex IV of the same document, in which the term “proceeds” was related to an offence. That was the only way in which article 3, paragraph 1(a), could sensibly be understood.

16. Mr. LAVIÑA (Philippines) said that the problem which remained was not simply one of terminology; if the property were not related to the proceeds, it would be unconstitutional to confiscate it. The method of confiscation (whether by fine or by other penalty) was for national legislation to determine, and if the property confiscated must equal the proceeds, then there must be a relationship between the two.

17. Mr. RAO (India) proposed a new wording for a definition of property, based on Variant B on page 49 of document E/CONF.82/3, namely: “‘Property’ means proceeds, property and assets of every description and any other thing, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and deeds and instruments evidencing title to, or interest in, such proceeds, property, thing or assets;”.

18. Mr. NAJMUDDIN (Pakistan) said that in the light of article 3, paragraph 9, which permitted Parties to give their own interpretation to the article and reaffirmed that national law was supreme, the question of the definitions of “property” and “proceeds” could be held in abeyance for the time being. He proposed that the Committee should continue consideration of other parts of paragraph 1.

19. It was so agreed.

20. The CHAIRMAN noted that the text proposed by the German Democratic Republic for subparagraph (b) in document E/CONF.82/C.1/L.2 combined subparagraphs (b), (c) and (d) of the basic text, while the amendment submitted by India (E/CONF.82/C.1/L.12) contained a reference to “substances in List A and List B”.

21. Mr. BOBIASZ (Canada) said that the inclusion of any reference to substances in List A and List B was contingent on the inclusion of such a reference in article 2, which had not yet been decided. He therefore proposed that the phrase “and the substances in List A and List B” should be placed in square brackets until the text of article 2, paragraph 1, had been finalized.

22. It was so agreed.

23. Mr. PAREJO GONZALEZ (Colombia) said that his delegation welcomed the amendment submitted by the German Democratic Republic, as it contained, in a simple form, all the elements of the basic text in document E/CONF.82/3. He urged the Committee to adopt the amendment.

24. Mr. ZELDIN (United States of America), supported by the representatives of Italy and Colombia, proposed that the words “derived from or” in the introductory part of paragraph 1 should be deleted and that the phrase “intended for use in the commission of offences” elsewhere in the paragraph should be altered to read “intended for use in any way in the commission of offences”.

25. Mr. van CAPELLE (Netherlands) said that the text proposed by the German Democratic Republic had merit in that it was shorter. However, it complicated the issue. He therefore thought it wiser to maintain the text in document E/CONF.82/3.

26. Mrs. HUSSEIN (Malaysia) said that she had reservations concerning the proposal to delete the words “derived from or” pending the outcome of discussion in the Conference on the question of drug cultivation.

27. The CHAIRMAN said that he would inform the Committee of the result of that discussion.

28. Mrs. HUSSEIN (Malaysia) withdrew her reservations.

29. Mr. RAO (India) suggested that in the amendment proposed by the United States the words “in any way” should be replaced by “in any manner”.

30. The CHAIRMAN suggested that the words “and the substances in List A and List B” should be included, in square brackets, in subparagraph (a) of the text proposed by the German Democratic Republic (E/CONF.82/C.1.L.2), that the words “derived from or” should be deleted in subparagraph (b) of that text and that the words “in any manner” should be inserted after the words “intended for use” in the same subparagraph.

31. Article 3, paragraph 1, as amended by the German Democratic Republic and with the changes suggested by the Chairman, was approved.

**Article 3, paragraph 2**

32. Mr. GONZALEZ FELIX (Mexico) said that one of his delegation’s aims in submitting its proposal for amendment (E/CONF.82/3, page 110) was to avoid the very didactic wording of paragraph 2 in the basic draft, so as to ensure adoption of a convention that could be accepted and brought into force as soon as possible. It was because there was no precise equivalent in Spanish legal language to the English word “freeze” that the additional explanatory words “or place under preventive embargo” had been included in Mexico’s proposal.

33. Mr. FERRARIN (Italy) expressed the hope that the Mexican delegation would feel able to withdraw its amendment to paragraph 2. He suggested that the question of the use of the word “freeze” should be left to the Drafting Committee.

34. Mr. van CAPELLE (Netherlands) supported the views of the Italian representative.

35. Mr. MAHMOOD (Iraq) expressed objection to the use of the phrase “undertakes to approach its competent legislative bodies to initiate” contained in the Mexican proposal.
36. Ms. VOLZ (United States of America) agreed with the comments of the representatives of Italy and Iraq. She had no objection to the addition of the words "or place under preventive embargo", although some verb other than "freeze" might be found.

37. Mr. BROUSSE (Monaco) said that the wording in the basic draft had a far more binding connotation and was therefore preferable.

38. Mr. WELLS (Australia) suggested that, in line with the Mexican proposal, the second line of paragraph 2 should begin with the words "its competent authorities to identify,...".

39. Mr. BOBIASZ (Canada) supported the views of the previous speaker.

40. Mr. GONZALEZ FELIX (Mexico) said his delegation had agreed to withdraw its proposal for amendment of article 2, paragraph 1, concerning the definition of offences. The Mexican proposal for amendment of paragraph 2 dealt, however, with the more important matter of measures to be taken with regard to forfeiture and confiscation of proceeds and property. However, his country had no difficulty in accepting the basic draft before the Committee.

41. The CHAIRMAN suggested that the words "enable it" should be replaced by the words "enable its competent authorities", in line with the Mexican proposal.

42. It was so agreed.

43. The CHAIRMAN suggested that the question of the addition of the phrase "or place under preventive embargo" could be left to the Drafting Committee.

44. Mrs. ZABARTE (Spain) said that even the additional phrase proposed by the Mexican delegation might present problems for other Spanish-speaking countries. She agreed that the question should be referred to the Drafting Committee.

45. Mr. CAPEK (Czechoslovakia) said that the term "freeze" was also unknown in Czechoslovak legislation. For the purposes of the convention, however, the term was defined in article 1.

46. Mr. BROWNING (United States of America), supported by Mr. WELLS (Australia), suggested that the Committee should continue its consideration of the substantive provisions of the article and return to the question of definitions later.

47. It was so agreed.

48. Article 3, paragraph 2, as amended, was approved.

Article 3, paragraph 3

49. Mr. GONZALEZ FELIX (Mexico) drew attention to the paragraph numbered 3 in the Mexican proposal (E/CONF.82/3, page 110), which corresponded to paragraph 3 of the basic draft. Mexico again had no problem with the basic text, the required domestic legislation being already in force. He understood that the normal procedure in all countries was for banking secrecy to be lifted in the event of a court order being issued, but his delegation was anxious to know what the position would be—in the case of adoption of paragraph 2 of the basic draft—if a judge refused to issue an order lifting banking secrecy. That would in fact constitute a failure to implement the convention—an extremely serious matter.

50. Mrs. JONES (United Kingdom) said that paragraph 3 of the basic draft, which laid an obligation on Parties to the convention to empower courts or authorities to issue an order in respect of banking secrecy would not in fact give rise to the results envisaged by the representative of Mexico.

51. Mr. GONZALEZ FELIX (Mexico) said that, if the purpose of paragraph 3 was exclusively to empower courts to lift banking secrecy, he wished to know whether that meant that courts might find grounds for failing to produce bank records to another State.

52. Mrs. JONES (United Kingdom) said that the meaning appeared to be quite clear, in the basic draft, namely that a Party should not be entitled to decline to empower its courts to take action in lifting banking secrecy.

53. Mr. WELLS (Australia), replying to a question by Mr. GONZALEZ FELIX (Mexico) regarding the grounds on which a court might refuse to lift banking secrecy, said that insufficient evidence might have been presented, for example, linking the commission of the offence, which had been proved before a court, and the property in question.

54. Mrs. CHAVES (Panama) said that it was her understanding that the courts or competent authorities would initiate proceedings only where they had definite proof that a bank was handling the proceeds of illicit traffic.

55. Mr. PAREJO GONZALEZ (Colombia) said that paragraph 3 was one of the most important provisions in the whole convention. The present gap in the legislation of many countries enabled drug traffickers to double their earnings. Article 3, paragraph 3 of the basic draft gave the Parties a means of breaking the power of the international drug trafficking rings.

56. Mr. MADDEN (Jamaica) requested clarification of the phrase "empower its courts or other competent authorities". If courts were empowered to deal with the question of the lifting of banking secrecy, what other authorities could be concerned apart from the courts themselves.

57. The CHAIRMAN said that in Italy judicial investigating authorities had the power to issue orders for the lifting of secrecy.

58. Mr. WELLS (Australia) said that in common law countries commissions set up to deal with drug trafficking were normally empowered to require the presentation of bank records.
59. Mr. RAO (India) said that in most countries there were quite a few authorities, in addition to the judiciary, such as income tax inspectors and customs authorities, which were empowered to demand such information.

60. Mr. MADDEN (Jamaica) asked whether those authorities could act directly or would nevertheless require a court order for enforcement of their demands.

61. Mr. HAY (United Kingdom) said that a Party, wishing to bring into force the powers provided for in the convention, would submit and promulgate appropriate legislation. It might then empower a particular body to carry out the necessary measures, that body being given the same powers as another Party might entrust to a court.

62. Mr. GONZALEZ FELIX (Mexico) welcomed the explanations which had been given. However, he still had one rather serious concern, namely with regard to paragraph 4(c) of article 3, which was in effect a safeguard clause. It was of course important that banking secrecy should exist and it was accordingly enshrined in domestic legislation, but it was equally important to ensure that banking secrecy could also be lifted for the purpose of obtaining information on drug traffickers' transactions. National procedures had to be recognized, but if national procedures enabling banking secrecy to be lifted were not available, the result was only too clear. The convention could not then be implemented.

63. Mr. PAREJO GONZALEZ (Colombia) said that the concern of the Mexican delegation might be partially allayed by a reading of article 3, paragraph 9.

64. Mr. GONZALEZ FELIX (Mexico) said that, having regard to the provision in article 3, paragraph 9, his delegation was prepared to accept the basic draft of paragraph 3 in document E/CONF.82/3.

65. Article 3, paragraph 3 was approved.

Article 3, paragraph 4

Subparagraphs (a) and (c)

66. The CHAIRMAN invited the Committee to consider paragraph 4 and the related part of the Mexican proposal on page 110 of document E/CONF.82/3.

67. Mrs. KATHREIN (Austria) drew attention to the need to introduce into paragraph 4 the concept of dual criminality. That concept had been incorporated into article 5 on mutual legal assistance and it was appropriate to make provision for it with regard to confiscation as well. The provisions of subparagraph (c) did not, in her opinion, cover that point. She urged, in any event, that the square brackets surrounding subparagraph (c) should be eliminated.

68. Mr. BAHEYNS (France) agreed that the square brackets should be eliminated from subparagraph (c). In addition, however, the subparagraph should be modified to take account of the fact that in certain countries, such as his own, there were no legal provisions on the subject of confiscation at another country's request. In a case of that kind, it was the domestic rules of procedure that applied. He accordingly suggested the following rewording for subparagraph (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 its domestic law and procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it is bound in relation to the requesting Party".

69. Mr. van CAPELLE (Netherlands) supported the elimination of the square brackets from subparagraph (c).

70. The CHAIRMAN suggested that the Committee should agree to the retention of subparagraph (c) in substance and consequently to the elimination of the square brackets.

71. It was so decided.

72. Mr. SUN Lin (China) said that the provisions of paragraph 4 should take the form of a recommendation and should not be mandatory. His delegation could accept, in principle, the French redrafting of subparagraph (c).

73. Mrs. HUSSEIN (Malaysia) noted the reference in the French proposal to "procedural rules". If those words were intended to refer to administrative procedures, her delegation could not accept the French amendment and urged retention of the original draft of subparagraph (c).

74. The CHAIRMAN invited the Committee to consider whether the question of dual criminality mentioned by the Austrian representative was already covered by the proviso in subparagraph (c) "subject to the conditions of its domestic law".

75. Mr. WELLS (Australia) said that the term "domestic law" covered both substantive law and procedural law, both of which would thus govern the granting or the rejection of a request for confiscation.

76. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the introductory part of paragraph 4, subparagraph (a).

77. It was so decided.

78. The CHAIRMAN invited the Committee to consider subparagraph 4(a)(i).

79. Mr. GONZALEZ FELIX (Mexico) drew attention to his delegation's proposal (E/CONF.82/3, annex IV, page 110) to replace the term "confiscation" by the words "seizure or securing". The purpose of that amendment was to cover both the preliminary order to secure the property and the final order of confiscation.

80. The CHAIRMAN pointed out that subparagraph (b) contained a reference to such preliminary steps.

81. Mr. GONZALEZ FELIX (Mexico) said that he would not press the amendment proposed by his country.
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82. Mr. RAO (India) said that, for the reasons which he had already given in relation to another provision, his delegation proposed that the term "confiscation" should be replaced by the words "confiscation or forfeiture".

83. Ms. VOLZ (United States of America) proposed that, in order to harmonize it with subparagraph (a)(ii), subparagraph (a)(i) should be reworded as follows:

"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"

84. Mr. MARTINI (Guatemala) pointed out that, for the purposes of the Spanish text, a clear distinction should be drawn between the term "comiso", i.e., the penalty of confiscation, which transferred the ownership of the confiscated property to the State and "embargo" which was a precautionary measure.

85. The CHAIRMAN said that that point would be noted.

86. Mrs. JONES (United Kingdom) supported the rewording of subparagraph (a)(i) proposed by the United States.

87. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee accepted in principle the United States rewording of subparagraph (a)(i). The text of that amendment would be duly circulated in the languages of the Conference.

88. It was so decided.

The meeting rose at 5.50 p.m.

7th meeting

Wednesday, 30 November 1988, at 6.45 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 3, paragraph 4 (continued)

Subparagraph (a)(ii)

1. Mr. TEWARI (India) proposed that the word "confiscation" be replaced by the words "confiscation or forfeiture", in order to take account of Indian legal terminology.

2. The CHAIRMAN said that the point just raised by the Indian representative would be dealt with in connection with article 3, paragraph 1. Once a decision had been taken on the matter, all the paragraphs of article 3 would be brought into line in that respect.

3. Mr. MADDEN (Jamaica) noted the reference in subparagraph (a)(ii) to "an order of confiscation issued by the requesting Party". He wished to know why there was no reference to an order "issued by the requesting Party" in the introductory paragraph of subparagraph (a) or in subparagraph (a)(i).

4. The CHAIRMAN explained that both in the expert group and in the Review Group it had been decided not to refer to an order of confiscation "issued by the requesting Party" in subparagraph (a)(i) because the two subparagraphs dealt with two different methods of international co-operation. Subparagraph (a)(i) dealt with the case of confiscation in a State where the proceeds were found. The order in that case would be issued by the local authorities of the requested State. It was immaterial whether an order by the requesting State had been issued or not. In subparagraph (a)(ii) an order by the requesting State was essential.

5. Mr. PAREJO GONZALEZ (Colombia) observed that the Spanish text of subparagraph (a)(ii) did not accurately reflect the idea contained in the English text.

6. Mr. GAUTIER (France) said that the French text suffered from the same defect. The Drafting Committee would have to bring the Spanish and French versions into line with the English text.

7. Mr. PAREJO GONZALEZ (Colombia) saw some ambiguity in the expression "to the extent requested", at least in the Spanish version of the subparagraph.

8. Mrs. JONES (United Kingdom) explained that a confiscation order might deal with more than one item of property. The requesting State could have enforced the order on its territory on one item and be seeking assistance from the requested State in respect of the remainder of the property.

9. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved subparagraph (a)(ii) subject to alignment of the Spanish and French versions with the English text.

10. It was so decided.
Committee I—7th meeting

Paragraph 4(b)

11. **Paragraph 4(b) was approved.**

Paragraph 4(c) (continued)

12. The CHAIRMAN noted that the Committee, at its previous meeting, had dealt with subparagraph (c), which it had accepted in principle as redrafted by the French representative, subject to circulation of the French amendment in the languages of the Conference.

13. Mr. TEWARI (India) reserved his delegation's position on the French amendment because the phrase "in accordance with its domestic law" did not have the same meaning as the original wording: "in accordance with and subject to the conditions of its domestic law".

**Paragraph 4(d)**

**Introductory part**

14. The CHAIRMAN pointed out that the references in the introductory part to provisions of article 5 would be completed when the Committee had finalized the text of that article. In reply to a question by Mr. MADDEN (Jamaica), he said that the qualification "mutatis mutandis" had been inserted to reflect the view, expressed in the expert group discussions during the preparation of the draft, that there might not be an exact fit between the provisions on mutual legal assistance in article 5 and the requirements of the international co-operation foreseen under article 3, paragraph 4. Rather than attempt to develop a new set of specific norms concerning the latter, it had been deemed sufficient to indicate that the provisions of article 5 might be applied there under article 3 in a somewhat flexible manner.

15. The introductory part of article 3, paragraph 4(d), was approved.

**Paragraph 4(d)(i)**

16. **Paragraph 4(d)(i) was approved.**

Paragraph 4(d)(ii)

17. Mr. TEWARI (India) proposed that the words "or competent authority" should be inserted after the word "court".

18. Mr. ALLAGUI (Tunisia) suggested that the amendment just proposed should read "or competent legal authority".

19. Mr. SCHUTTE (Netherlands), supported by Mr. MADDEN (Jamaica), Mrs. KATHREIN (Austria), and Mr. GASPAR (Portugal), said that for countries such as his own, it would be impossible to give effect to an order of confiscation issued by any authority other than a court of the requesting Party. In the case of such orders, the request would have to be refused.

20. Mr. LAVINHA (Philippines) said he believed it had earlier been agreed that references to courts in the draft convention would be considered to subsume references to competent authorities.

21. Mrs. JONES (United Kingdom) questioned whether an order of confiscation would, in reality, be issued by any authority other than a court.

22. The CHAIRMAN, pointing out that the provisions of the subparagraph (d)(ii) pertained to subparagraph (a)(ii), suggested that the simpler wording used in the latter might be employed. The reference could be merely to "... an order of confiscation issued by the requesting Party".

23. Mr. TEWARI (India) and Mr. BROWNING (United States of America) supported the Chairman's suggestion.

24. Mr. IGARASHI (Japan) wondered whether the conditions for acceptability established in paragraph 4(c) were not sufficient.

25. Mr. OUACHARIF (Morocco) agreed with the representative of the United Kingdom that an order of confiscation would be issued only by a court. He added that it should be made clear in the subparagraph that the copy of the order of confiscation referred to should be legally authenticated by the requesting Party.

26. Mr. WELLS (Australia) submitted that the most important issue was the legal admissibility of the order of confiscation as far as the requested Party—which must give effect to it—was concerned.

27. Mrs. PONROY (France) considered that the document in question must be in accord with the laws of both Parties.

28. The CHAIRMAN said that such had been the understanding of the expert group and of the Review Group; reference was made in paragraph 4(d)(ii) simply to "a legally admissible" copy precisely to avoid leaning in one direction or the other where the respective legislations were concerned. He asked whether, on that understanding, the Committee could approve the text of paragraph 4(d)(ii) of the draft convention, with the deletion of the words "a court of".

29. It was so decided.

**Paragraph 4(d)(iii)**

30. **Paragraph 4(d)(iii) was approved.**

**Paragraph 4(e)**

31. Mr. DZYUBENKO (Union of Soviet Socialist Republics) proposed the deletion of paragraph 4(e), which would require Parties to indicate in advance, and without knowing what requests were to be made, which of the available procedures they would select. He considered such a requirement unacceptable.

32. The CHAIRMAN pointed out that the provisions of the paragraph did not exclude recourse to both procedures, or the possibility of reaching decisions on a case-by-case basis.

33. Mrs. PONROY (France) agreed with the representative of the USSR. States should be free to apply one or
other of the procedures envisaged in the convention, or their own internal procedures.

34. Mr. OUACHARIF (Morocco) agreed that the paragraph should be deleted. There did not appear to be any precedent for the provision it contained, which, moreover, might be construed as infringing the sovereignty of States.

35. Mr. CZEPURKO (Poland), pointing out that application of the provisions of the proposed paragraph would impose an additional burden on the Secretary-General of the United Nations, and that in any case the application of the convention would be supervised by such bodies as the Division of Narcotic Drugs, agreed that the provision should be deleted.

36. Paragraph 4(e) was deleted.

37. Mr. SCHUTTE (Netherlands) said he believed that the action just taken by the Committee might be unintentionally harmful to the implementation of the convention by depriving Parties of a useful means of exchanging information. Quoting from article 18, paragraph 1(b), of the Single Convention on Narcotic Drugs, 1961, which provided that Parties shall furnish to the Secretary-General information such as the texts of all laws and regulations promulgated in order to give effect to the Convention, he suggested that commitments of that kind permitted a clearing-house activity which could be very useful and instructive to all concerned, and render their co-operation more effective.

38. Mrs. HUSSEIN (Malaysia) suggested that the concerns of the previous speaker were met by the provisions of article 16 of the draft convention.

39. Mrs. ZABARTE (Spain) pointed out that article 16 concerned information to be provided on request. She believed that the point raised by the representative of the Netherlands deserved further consideration.

40. Mr. GONZALEZ FELIX (Mexico) agreed that the ready availability of information concerning relevant legal situations and procedures of the different Parties to the convention could be of great mutual benefit in their cooperation.

41. Mr. ZURITA (Venezuela) pointed out that the system of notification alluded to in the text which the Committee had just decided to delete constituted the sole means of making available for exchange information concerning the implementation of article 3, paragraph 4.

42. The CHAIRMAN suggested that delegations interested in the point raised by the representative of the Netherlands might consult together with a view to producing a text for joint submission to the Committee.

Paragraph 4(f)

43. Mr. PAREJO GONZALEZ (Colombia) expressed disapproval of the conditional nature of the provision in the first two sentences of the paragraph. In his view the convention should form a sufficient treaty basis in itself. The signing of a treaty created an obligation which transcended the internal legal order.

44. Mr. IGARASHI (Japan) preferred to leave the paragraph in its present form, with the square brackets deleted. The system proposed for the confiscation of the proceeds of drug trafficking was quite novel to some countries, including his own. There was a number of different legal systems and international co-operation had not yet reached the stage where foreign requests could readily be executed. It should therefore be made clear when a Party selected a method of procedure under the article whether the obligation to execute the foreign request derived from domestic law or from a treaty. Apparently, the Parties had a choice in the matter, and the paragraph should so state.

45. Mr. TEWARI (India), supported by Mrs. PONROY (France), said that he favoured leaving the text of the paragraph unaltered, but making a separate paragraph of the last sentence.

46. Mr. SCHUTTE (Netherlands) proposed the deletion of the first two sentences, and of the phrase "to carry out" in the last sentence.

47. Mr. STEWART (United States of America) said that he would prefer the deletion of the brackets only. He agreed, however, with the representative of Colombia that a double treaty requirement was superfluous. He suggested solving the difficulty by modelling the subparagraph on the extradition provision in article 4, paragraph 3, and substituting "must" for "may" in the second sentence of the subparagraph.

48. Mr. LAVIÑA (Philippines) agreed with the United States representative. He also supported the proposal to make the last sentence a separate paragraph.

49. Mrs. ZABARTE (Spain) said that she too agreed with the suggestion of the United States representative.

50. Mr. KAPELRUD (Norway) preferred the amendments proposed by the representative of the Netherlands, which he felt would strengthen the article.

51. Mr. SAINT-DENIS (Canada) agreed with the representatives of the Netherlands and Norway. Subparagraph (f) was the crux of article 3, paragraph 4. If Parties could elect to make their co-operation in the measures contemplated in the article dependent on the existence of a treaty, they would be able to circumvent their obligations by refusing to enter into such a treaty. The first two sentences should in his view be deleted.

52. Mr. KATHOLNIGG (Federal Republic of Germany) considered that the provision in subparagraph (f) was not comparable with the extradition clause in article 4, paragraph 3. Extradition was already covered by existing arrangements among countries, whereas the measures proposed in article 2 of the draft convention were entirely new. The first two sentences of subparagraph (f) made it possible for Parties to avoid their obligations, especially in conjunction with the sentence: "the Parties shall seek to conclude...". He would have somewhat less difficulty
with the paragraph if the word “may” in the second sentence were replaced by “shall”.

53. Mr. OUACHARIF (Morocco) suggested that the paragraph should be redrafted in order to reinforce its meaning and to facilitate the task of signatories of the convention.

54. Mr. ZURITA (Venezuela) agreed with the representatives of Colombia and the United States of America that the convention should form the fundamental legal basis for the obligations assumed by Parties. To make the cooperation measures subject to the existence of another treaty or a bilateral agreement would invite breaches of the provisions of the convention. The amendment suggested by the representative of the United States of America would be a satisfactory solution.

55. Mr. LOW MURTRA (Colombia) endorsed the previous speaker’s remarks and suggested that the words “and sufficient” should be inserted before the words “treaty basis” in the second sentence. He supported the proposal to replace the word “may” in that sentence by “shall”.

56. Mrs. JONES (United Kingdom) stressed the importance of the last sentence of subparagraph (f). She supported the proposal of the representative of the Netherlands to delete the words “to carry out or” in that sentence. The first two sentences of the subparagraph were not necessary, but, if they were to be included, she would support the proposal to replace “may” by “shall” in the second sentence. She also agreed with the United States representative that subparagraph (f) should be modelled on the provision in article 4, paragraph 3.

57. Mr. TEWARI (India) pointed out that subparagraph (f) contemplated two different situations: as between Parties signatories to the convention, and as between a Party and a non-Party. The two situations should in his view be treated separately. He proposed rewording the first two sentences to read:

“If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional upon the existence of a relevant treaty, it shall consider this Convention as the necessary treaty basis.”

He preferred “may” to “shall” in the last sentence.

58. Mr. de la GUARDIA (Argentina) favoured retaining the first two sentences of the subparagraph and referring to the convention as a sufficient treaty basis. That would provide a basis for all the actions contemplated in the article. He would not object to division of the paragraph into two parts.

59. Mrs. HUSSEIN (Malaysia) said that she favoured deletion of the first two sentences. She supported the proposal to delete the words “to carry out or” in the third sentence. Alternatively, she could support an amendment on the lines proposed by the representative of the United States of America.

60. The CHAIRMAN summarized the three different solutions which had been suggested for dealing with subparagraph (f). He asked whether the Committee agreed that the proposed convention should be regarded as a sufficient treaty basis.

61. It was so agreed.

62. The CHAIRMAN offered the following wording for consideration by the Committee:

“If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional upon the existence of a relevant treaty, that Party shall consider this Convention as the necessary treaty basis”.

63. Mr. IGARASHI (Japan) said that his country might have difficulty with such a text.

64. Mrs. PONROY (France) said that she would reserve her country’s position pending action by the Committee on article 4, paragraph 3. She favoured a compulsory form of words in article 3, paragraph 4(f).

65. Mrs. ZABARTE (Spain) favoured the wording suggested by the Chairman, provided the convention was defined as both necessary and sufficient as a treaty basis. She supported the Netherlands proposal to delete the words “to carry out or” in the last sentence.

66. Mr. LAVIÑA (Philippines) also supported the Chairman’s formulation for the subparagraph.

67. Mr. OUACHARIF (Morocco) said that the convention should be regarded as the only treaty basis.

68. The CHAIRMAN asked whether the Committee agreed to the insertion of the words “and sufficient” before “treaty basis” in the second sentence.

69. It was so agreed.

70. The CHAIRMAN noted the reservations which had been expressed by the representatives of France and Japan.

71. He asked whether the Committee would agree to make the last sentence of subparagraph (f) a separate subparagraph (g), the words “to carry out or”, being deleted.

72. It was so agreed.

73. Mr. LAVIÑA (Philippines) and Mr. TEWARI (India) expressed a preference for replacing the word “shall” in the new subparagraph (g) by the word “may”.

The meeting rose at 9 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 3 (continued)

1. Mr. KURAA (Egypt), speaking on article 3 as a whole, said his country did not oppose the idea of confiscating proceeds at the request of another Party. The problem had to be viewed from the standpoint of a judge in a national court who was called upon to make a confiscation order. Egyptian civil and commercial law made no provision for confiscation, but it existed under Egyptian criminal law, in which it was regarded as a sanction aimed at depriving the offender of the means of committing an offence. Judges in Egyptian criminal courts were competent to order confiscation as part of the judgement.

2. The draft convention distinguished between article 2, which dealt with offences and sanctions, and article 3, concerning seizure and confiscation. It thus conferred a special status on confiscation, distinguishing it from sanctions ordered by a judge during criminal proceedings. Indeed, it would be possible, as the draft stood, for non-judicial bodies such as customs authorities to order confiscation. Egyptian civil and commercial law made no provision for confiscation, but it existed under Egyptian criminal law, in which it was regarded as a sanction aimed at depriving the offender of the means of committing an offence. Judges in Egyptian criminal courts were competent to order confiscation as part of the judgement.

3. He therefore suggested that some formula should be included in article 3 that would allow Parties to the convention to amend their domestic law in such a way as to enable their competent authorities to comply with requests received from other Parties under the article.

4. The CHAIRMAN pointed out that the fact that confiscation was dealt with principally under article 3 did not preclude confiscation as a sanction under article 2, where forfeiture was provided for in paragraph 2(a). Also, it should be noted that the two procedures set forth under paragraph 4(a) of article 3 were alternatives, and that, in accordance with paragraph 4(c), a requested Party could require the foreign order to be a judicial one before it acted on a request for its enforcement under the convention.

Paragraph 4(c) (E/CONF.82/C.1/L.15) (continued)

5. Mr. BAEYENS (France) said that the purpose of his delegation's amendment (E/CONF.82/C.1/L.15) was to make the text realistic. In his own country no provision of domestic law authorized the competent authorities to entertain a request from a foreign State for confiscation, so he had proposed the addition of a reference to procedural rules.

6. Mr. BOBIASZ (Canada) suggested that, in order to provide greater flexibility, the French amendment might 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 the procedures of its domestic law or rules and regulations, or of any bilateral or multilateral treaty, agreement or arrangement to which it is bound in relation to the requesting Party.”

7. Mr. OUCHARIF (Morocco) pointed out that the addition of the reference to procedural rules could imply that such rules already existed. Furthermore, it was not clear what rules were referred to. In his view, the term “domestic law” was sufficiently comprehensive to cover all procedural rules and regulations; if necessary, that could be specified in the definitions. He therefore opposed the addition of the reference to procedural rules, which, if accepted, would have to be inserted throughout the text wherever domestic law was mentioned.

8. Mr. FERRARIN (Italy) said he agreed with the French delegation about the desirability of inserting a reference to procedural rules. He thought that the text of the French amendment could be improved by the insertion of the words “and subject to the conditions of” before the words “its domestic law” and the insertion of the words “in accordance with” before the words “its procedural rules”.

9. Mr. LAVIÑA (Philippines) said that his delegation construed the term “domestic law” as it was used in the law of treaties; namely, as meaning constitutions, statutory laws and administrative and procedural rules and regulations. Seen in those terms, the text appearing in document E/CONF.82/3 was perfectly adequate.

10. Mr. BAEYENS (France) said he could accept both the Canadian and the Italian amendments to his delegation's proposal.

11. Mrs. KATHREIN (Austria) and Mr. SUN Lin (China) said that their delegations would have difficulty accepting the Canadian subamendment but could approve the Italian proposal.

12. Mr. ZELDIN (United States of America) said that his delegation favoured the Canadian subamendment.

13. Mr. SUCHARIKUL (Thailand), Mr. WIRYONO (Indonesia), Mr. ASSADI (Islamic Republic of Iran),
Mr. HEUCKE (German Democratic Republic), Mr. VIANA de CARVALHO (Brazil) and Mr. van CAPELLE (Netherlands) said that their delegations favoured the Italian subamendment.

14. Mr. KATHOLNIGG (Federal Republic of Germany) and Mr. AL-NOWAIŞER (Saudi Arabia) said their delegations could accept either the Canadian or the Italian subamendment.

15. Mr. BOBIASZ (Canada) withdrew his delegation’s subamendment.

16. Ms. IBRAHIM (Malaysia) asked whether the expression “procedural rules” referred to purely administrative rules or to legal rules.

17. Mr. BAEYENS (France) said that in France the term meant the entire body of judicial and administrative rules, i.e. rules other than the laws enacted by parliament.

18. Mr. van CAPELLE (Netherlands) suggested that the words “it is bound” in the French proposal should be replaced by the words “it may be bound”.

19. The CHAIRMAN said that if he heard no objection he would take it that the Committee approved the text of article 3, paragraph 4(c), as proposed by France (E/CONF.82/C.1/L.15) and amended by Italy and the Netherlands.

20. It was so decided.


21. Mr. FERRARIN (Italy) said his delegation had serious difficulties with the amendment submitted by the United States delegation in document E/CONF.82/C.1/L.16. The replacement of the words “seek an order of confiscation”, which appeared in the original text, by the words “submit the request to its competent authorities for the purpose of seeking an order of confiscation” introduced an undesirable discretionary element into the draft.

22. Mr. OUCHARIF (Morocco) said that he agreed that the United States amendment gave the competent authorities of the requested State too much latitude in regard to confiscation orders.

23. Mr. BAEYENS (France) pointed out a substantial difference between the English and French versions of paragraph 4(a)(i), in that the words “saisira . . . en vue de faire prononcer une décision de confiscation” were much stronger than “seek an order of confiscation”.

24. Mrs. JONES (United Kingdom) said that her delegation supported the United States amendment, which added clarity to the text and reflected the realities of the situation.

25. Mr. BROWNING (United States of America) said that when his delegation’s amendment was read in conjunction with the introductory wording to paragraph 4(a), which provided that “the Party . . . shall”, it became clear that the submission of the request to a competent authority was obligatory for the requested Party.

26. In reply to a question from Mr. FERRARIN (Italy), he said that the “competent authorities” referred to in his delegation’s amendment were those that could grant the confiscation order.

27. Mr. POPOV (Bulgaria) said his delegation felt that the United States amendment fundamentally altered the meaning of the original text, which indicated clearly that the requested Party must seek an order of confiscation. With the version proposed by the United States, however, there would be no assurance that a submission to the competent authorities of a request for such an order would be acted upon.

28. Mr. BRUCE (Ghana) said the United States amendment was clear and concise and adequately reflected his delegation’s viewpoint.

29. Mr. van CAPELLE (Netherlands), Mr. AL-MUBARAKI (Kuwait), Mr. BOBIASZ (Canada), Mr. SUCHARIKUL (Thailand) and Mr. AL-NOWAIŞER (Saudi Arabia) expressed support for the United States amendment.

30. Mr. BAEYENS (France) said he approved the United States amendment but believed that the French version was more explicit than the English and should form the basis of the provision.

31. Mr. LAVIÑA (Philippines) said he understood the reasons that had prompted the United States to put forward its amendment, but he agreed with other delegations that it altered the meaning of the original text.

32. Mr. FERRARIN (Italy) said that, in the light of the explanations given by the United States concerning the meaning of “competent authorities”, he could accept the amendment. Like the French delegation, he believed that the French version should form the basis of the provision.

33. Mr. IGARASHI (Japan) asked whether the United States contemplated judicial authorities only or other competent authorities as well.

34. Mr. BROWNING (United States of America) said the term “competent authorities” meant the court system, namely the judicial authorities that were empowered to dispose of the proceeds and property referred to in article 3, paragraph 1.

35. Mr. PAREJO GONZALEZ (Colombia) said he believed the original text of paragraph 4(a)(i) and the United States amendment to it were alike in substance and he could accept either of them.

36. Mr. POPOV (Bulgaria) said that he approved the United States amendment but wished to place on record his view that its adoption would establish a system that
was fundamentally different, in both legal and practical terms, from the one envisaged in the original text.

37. Mr. FERRARIN (Italy) suggested that the weakness in the English version of the United States amendment might be eliminated by replacing the word "seeking" by the word "obtaining".

38. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee approved the amendment submitted by the United States E/CONF.82/C.1/L.16 and referred it to the Drafting Committee for consideration on the basis of the more explicit language of the French version.

39. It was so decided.

The meeting rose at 1.05 p.m.

9th meeting
Thursday, 1 December 1988, at 3.40 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 3 (continued)

Paragraph 4(e) (continued) (E/CONF.82/C.1/L.17)

1. The CHAIRMAN recalled that at its 7th meeting, the Committee, after deciding to delete paragraph 4(e) as drafted in document E/CONF.82/3, had agreed that delegations wishing to do so might jointly submit a new text which would be set in the place of the deleted paragraph. Such a text was now before the Committee in document E/CONF.82/C.1/L.17.

2. Mr. KATHOLNIGG (Federal Republic of Germany), introducing, on behalf of its sponsors, the amendment in document E/CONF.82/C.1/L.17, said that in view of the difficulties which some delegations, but not his own, had had with the original draft, the new text was submitted in the belief that its substance would be helpful to Parties in the execution of their obligations under article 3, paragraph 4, of the convention. It would enable them to inform themselves, through the Secretary-General of the United Nations, of each other’s laws and regulations pertaining to the matters covered by that paragraph.

3. Mr. BRUCE (Ghana) supported the proposed amendment, for the reason given by the previous speaker. He suggested, however, that for the sake of clarity, the adjective "domestic" should be inserted before the first reference to "laws and regulations" in the text.

4. Mr. HAY (United Kingdom) pointed out that, in the English text at least, the qualification "its" seemed to render superfluous the insertion suggested by the previous speaker.

5. Mr. OUCHARIF (Morocco) supported the joint amendment, but said he would like to see the phrase "...laws and regulations promulgated..." replaced by "...laws and texts which may be promulgated...".

6. Mr. AL-NOWAISEER (Saudi Arabia) said that if a new text was to replace the former draft paragraph 4(e), his delegation could accept the proposal before the Committee, on condition, however, that the first four words would read: "Each Party may furnish...".

7. Mr. TEWARI (India) observed that there was a difference in scope between the paragraph which had been deleted and the text now proposed. The former had called for notifications merely concerning the procedure to be applied when acting at the request of other Parties pursuant to article 3. The latter went much further, in referring to the texts of laws and regulations—and any subsequent changes thereto—promulgated to give effect to the paragraph. He suggested that the result desired by the sponsors of the joint amendment might perhaps be achieved through amendment of article 16 of the draft convention, on reports to be furnished by the Parties, to take account of the requirement under discussion. Amendment of article 16 might also prove desirable in connection with other substantive articles as well. Article 18, paragraph 1(b), of the Single Convention on Narcotic Drugs, 1961, offered a precedent in that connection.

8. Mr. SARDAR MAHMOOD (Iraq) supported the joint amendment submitted, modified as proposed by the representatives of Morocco and Saudi Arabia.

9. Ms. VOLZ (United States of America) supported the joint amendment as submitted. Its provisions should, she believed, be mandatory rather than optional, as were the similar provisions in article 18 of the 1961 Single Convention and article 16 of the Convention on Psychotropic Substances, 1971. She agreed with the representative of India that the requirement under discussion in relation to article 3, paragraph 4, might perhaps be considered when article 16 was taken up, at which time the question of reports on the implementation of other articles of the
convention—including, for example, article 8—could be considered.

10. Mr. BAÊYENS (France) supported the amendment in document E/CONF.82/C.1/L.17, but said he would prefer the text to begin with the words "Each Party may furnish...".

11. Mr. LIEBERT (Papua New Guinea) said that he endorsed the joint amendment as submitted. If the Secretary-General was to ensure the functions of a clearing-house for information, that information must be complete. Such would not be the case if its provision remained optional.

12. Mr. AL-OZAIR (Yemen) proposed that the new text submitted, amended as proposed by the representative of Saudi Arabia and with a further amendment replacing the words "this paragraph" by "this Convention", should be incorporated as a separate article in the final clauses of the draft convention.

13. Mr. TARANENKO (Ukrainian Soviet Socialist Republic) endorsed the joint amendment as submitted. If necessary, however, in the interest of consensus, he could accept the replacement of the word "shall" by "may".

14. Mr. YBAÑEZ (Spain), speaking as a sponsor of the joint amendment, reminded the Committee that the requirements established in that text were far less stringent than those in the original draft paragraph 4(e). To make its provisions optional rather than mandatory, and to call for the submission of all laws and regulations pertaining to the implementation of the convention would—he submitted—render the provisions of paragraph 4(e) meaningless and/or submerge the Secretary-General under a mass of documentation, in great measure irrelevant to the original purpose of the amendment. However, he was not opposed to the consideration of a general, more comprehensive article when agreement had been reached on the remainder of the draft text.

15. The CHAIRMAN pointed out that consideration of a more general provision on the submission of similar information on the implementation of other, or indeed all of the provisions of the convention could not take place until the other implementing clauses had been considered by Committee II. He invited further comment on the specific proposal in document E/CONF.82/C.1/L.17 and the oral amendments thereto.


17. Mr. AL-MUBARAK (Kuwait) supported that text, amended as proposed by the representatives of Morocco and Saudi Arabia.

18. Mrs. MOLOKWU (Nigeria) supported the proposed text but felt that its provisions should be made mandatory in order to ensure effective monitoring of the implementation of the provisions of article 3, paragraph 4.

19. Mr. POPOV (Bulgaria) said that he could accept the joint amendment (E/CONF.82/C.1/L.17) with the further amendments to replace "shall" by "may" and "paragraph" by "convention". He suggested, however, that the final decision on the provision under discussion could be taken at a later stage, when the Conference considered the question of implementation of the convention.

20. Regarding the suggestion that the matter might be dealt with in a more comprehensive context, he pointed out that the text before the Committee called for information to be furnished to the Secretary-General of the United Nations. It seemed to him, however, that article 18 of the draft convention provided for submission of reports concerning the execution of its provisions to the Commission on Narcotic Drugs or to the International Narcotics Control Board, in other words to the organ that would be responsible for supervising the application of the convention.

21. The CHAIRMAN said that it had not been his intention to propose that the provision under discussion be taken up in a more general context. He had merely observed that it was not possible, at the present stage of the Committee's deliberations, to consider the preparation of an eventual general provision. In view of the difficulty of reaching immediate agreement, the Committee might wish to postpone further consideration of a paragraph 4(e) which—he stressed—would be solely concerned with the implementation of article 3, paragraph 4, of the convention.

22. Mr. POPOV (Bulgaria) expressed himself in favour of postponement.

23. Mr. GONZALEZ FELIX (Mexico) stressed the specificity and innovatory nature of the provision under consideration. For his delegation, the main object at the present stage was to ensure the provision and exchange of information concerning the application of national laws and regulations in respect of the procedures for confiscation envisaged in article 3.

24. Mr. YBAÑEZ (Spain) agreed with the Mexican representative. To remove the specificity of the provision in document E/CONF.82/C.1/L.17 would, he felt, remove its significance. He urged adoption of that text and pointed out that there would be every opportunity to consider later a more general provision concerning the furnishing of information on the application of the convention as a whole.

25. Mr. JANSZ (Sri Lanka) supported the joint amendment. He pointed out to those delegations which had difficulty in accepting the replacement of the word "shall" by "may" that the absence of any reference to a timeframe in the text diluted the mandatory nature of the provision. He agreed that at the appropriate time consideration might be given to a more general provision concerning the furnishing of information.

26. Mr. PAREJO GONZALEZ (Colombia) said that he shared the views expressed by the representatives of Mexico and Spain and supported the amendment in its original, mandatory form. The International Conference on Drug Abuse and Illicit Trafficking held in 1987 had...
adopted a Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (A/CONF.133/4) which provided recommendations and guidelines on policies to be followed in law enforcement. States had subsequently been invited by the Secretary-General of the United Nations to incorporate those guidelines in an international instrument, thereby giving expression to their commitment. The terms in which that instrument was drafted should reflect the seriousness with which the commitment was undertaken.

27. Mr. GUNEY (Turkey) said that in view of the variety and diversity of the views expressed concerning the scope of the proposed provision and its place in the draft convention, it might be wise to postpone further discussion of the matter for the present.

28. Mr. OUCHARIF (Morocco), Mr. AL-NOWAISER (Saudi Arabia), Mr. ABDULSAMI (Libyan Arab Jamahiriya), Mr. NAZIH AL SHAVIDIA (Jordan), Mr. NAJMUDDIN (Pakistan) and Mr. OMAR (Afghanistan) supported the proposal to replace "shall" by "may".

29. Mr. ASSADI (Islamic Republic of Iran), Mr. MADDEN (Jamaica), Mr. KATHOLNIGG (Federal Republic of Germany), Mr. YBAÑEZ (Spain), Mr. FERRARIN (Italy), Mr. GONZALEZ FELIX (Mexico), Mr. HAY (United Kingdom), Mr. LAVIÑA (Philippines) and Mr. TEWARI (India) spoke in favour of retaining the word "shall".

30. Mr. CAPEK (Czechoslovakia) said that he was prepared to accept the joint amendment, either unchanged or with the word "shall" replaced by "may". He felt, however, that to make the provision optional would not contribute to strengthening the convention.

31. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that the problem appeared to be that some States were concerned lest they be required to provide information on laws and regulations which did not exist. He therefore proposed that the words "when appropriate" should be added to the joint amendment.

32. The CHAIRMAN suggested, as a compromise, that paragraph 4(e) should begin: "Each Party shall furnish, when appropriate, to the Secretary-General the text of its laws and regulations which give effect . . . .".

33. Mr. PAREJO GONZALEZ (Colombia) observed that the formula "shall . . . when appropriate" was equivalent in force to "may".

34. Mr. YBAÑEZ (Spain) said that a requirement to provide the Secretary-General with information that was publicly available could not be construed as an attack on national sovereignty.

35. Mr. KATHOLNIGG (Federal Republic of Germany) said that, as a sponsor of the joint amendment, he preferred to see the word "shall" retained, but was prepared to accept a compromise. It had never been the intention that States which had no relevant laws or regulations should enact or establish them. The provision's purpose was only to require those States which had such laws and regulations to inform the Secretary-General of them.

36. Mr. OUCHARIF (Morocco) said that his delegation saw a problem in that it appeared that countries would be required not only to provide the Secretary-General with the texts of their relevant laws and regulations; they would be obliged to promulgate such laws and regulations in order to do so.

37. Mr. HAY (United Kingdom) said that it had reservations concerning any proposal which weakened the obligation on States to furnish the text of relevant laws and regulations if such laws and regulations existed.

38. Mr. LAVIÑA (Philippines) said that without the obligatory force of the word "shall", the subparagraph lacked purpose. If "shall" were not maintained, the proposed subparagraph should not be adopted and any provision calling for the furnishing of information should be placed in article 16 of the draft convention.

39. Mr. WOTAVA (Austria) said that his delegation could accept any wording provided it did not oblige countries which lacked laws and regulations on the subject under discussion to promulgate such texts.

40. Mr. AL-NOWAISER (Saudi Arabia) recalled that the Committee had agreed to delete article 3, paragraph 4(e), as set out in the draft convention, that text having been considered too restrictive. The Committee could also agree not to approve the joint amendment before the Committee. If it were approved, his delegation would wish to see the word "shall" replaced by "may". However, it would not oppose a consensus reached on a compromise wording.

41. The CHAIRMAN, taking up proposals made by Mr. Hay (United Kingdom) and Mr. Madden (Jamaica), suggested that the Committee should approve the following text for article 3, paragraph 4(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."

42. It was so decided.

Paragraph 4(f) (continued)

43. Mr. van CAPELLE (Netherlands) said that, at the 7th meeting of the Committee, a consensus had been reached on altering the word "may" in the second sentence of paragraph 4(f) to "shall". At the same meeting it had also been agreed to delete paragraph 4(e) as it appeared in document E/CONF.82/3. Since a new subparagraph 4(e) had now been approved, it appeared advisable to bring the wording of paragraphs 5(a) and 4(e) into line.

44. Mr. HEUCKE (German Democratic Republic) said that he had felt, during the previous discussion, that in view of the concern expressed by some delegations it might be preferable to retain the word "may" in the second sentence of paragraph 4(f).
45. The CHAIRMAN reminded the Committee of its decision at the previous meeting to divide the original paragraph 4(f) into two subparagraphs (f) and (g). Those subparagraphs had then been approved by consensus and in his view the matter was therefore closed.

46. Mr. LAVIÑA (Philippines) supported the view just expressed by the Chairman.

47. Mr. BAEYENS (France) said that his delegation had taken note of and accepted the division of the original subparagraph 4(f) into two subparagraphs 4(f) and 4(g), which he understood had been approved.

48. Mr. BROWNING (United States of America), clarifying his delegation's position, said that it would have preferred to see the text between brackets in paragraph 4(f) deleted. However, it had offered as an alternative the version which the Committee had considered. That was not the preferred version by the United States delegation.

Paragraph 5

49. Mr. MADDEN (Jamaica) asked whether the meaning of paragraph 5(b) was that the agreements to which it referred should have been concluded before or would be concluded after the request was submitted by another Party.

50. The CHAIRMAN said that no chronological factor was involved. The agreements could be concluded either before or after the time of the request.

51. Mr. LIEBERT (Papua New Guinea) said that paragraph 5(b)(i) referred specifically to intergovernmental bodies specializing in the fight against illicit traffic in drugs. There were a number of non-governmental organizations which were concerned directly or indirectly with other aspects of the problem, such as the rehabilitation of drug addicts, which also appeared eligible to receive such contributions.

52. Mr. OUCHARIF (Morocco) said that, in his delegation's view, confiscation should be effected in accordance with the domestic law of the Party concerned; in other words, it should be carried out on the basis of an order made by the competent court. He would not like the convention to give any impression that confiscation would be an automatic procedure. Furthermore, the idea of distributing the confiscated proceeds of, or property acquired by, drug trafficking could give rise to complications in Morocco and other countries under Islamic law, since the sharing of such proceeds would directly contravene the law. Each State had its own legislation and enjoyed the sovereign right to make whatever use it saw fit of such funds. He therefore proposed that subparagraphs (b)(i) and (b)(ii) should be deleted. That would give emphasis to the central idea of the paragraph, namely the confiscation of proceeds.

53. The CHAIRMAN said that paragraph 5(a) set out the principle that confiscated property should be disposed of by the Party which had effected the confiscation. Subparagraph (b) was simply a suggestion as to how the property or proceeds might be disposed of. He suggested that the Committee should first concentrate its attention on subparagraph (a).

54. Mr. KURAA (Egypt) said that his delegation had no objection to subparagraph (a) in the English version of the draft. There was, however, some ambiguity in the Arabic text as to which Party was entitled to dispose of the confiscated proceeds.

55. Mr. ZURITA (Venezuela) said that he had no difficulty in regard to subparagraph (a), especially since the principle involved was reiterated in paragraph 9 of article 3.

56. Mr. FOFA N (Senegal) said that the paragraph made the general position quite clear. Confiscation was effected by the Party in accordance with its domestic law. If, however, confiscation had been made at the request of another State, it provides the possibility for sharing such proceeds or property, including the costs and expenses incurred on a case by case basis, and the idea that a contribution may be made from the confiscated proceeds to intergovernmental organizations active in combating illicit drug trafficking.

57. Mr. ABDULSAM (Libyan Arab Jamahiriya) supported the proposal of Morocco to delete paragraph 5(b).

58. Mr. WELLS (Australia) asked whether, in view of the similarity between the two subparagraphs, paragraph 5(a) should not perhaps be brought into line with the text of paragraph 4(c) as approved by the Committee at the previous meeting. He suggested that the words "according to its law and administrative procedures" in paragraph 5(a) should be replaced by "in accordance with and subject to the conditions of its domestic law and in accordance with its procedural rules".

59. Mr. GUNEBY (Turkey) said that his delegation was prepared to accept paragraph 5(a) without any change. He did not fully understand what would be the ultimate fate of the confiscated proceeds if paragraph 5(b) were approved. Possibly the concerns expressed by some delegations might be allayed by introducing the words "in order to use them for projects earmarked by the Parties involved". That might exclude the possibility of any misuse of the funds concerned.

60. Mr. BRUCE (Ghana) urged the Committee to approve subparagraph (b), which adequately reflected the need for co-operation by all countries. Where a State confiscated proceeds or property in the circumstances envisaged in paragraph 5, it was only natural justice that the benefit of such confiscation should be shared with the country which had helped it to achieve the confiscation by furnishing information.

61. It was also appropriate to provide for the possibility of the funds involved going, at least in part, to intergovernmental bodies specializing in the fight against illicit traffic. Those organizations provided indispensable assistance to countries with limited resources.
62. Mr. Oстроvsky (Union of Soviet Socialist Republics) said that it was undesirable to amend the text of paragraph 5, which was well balanced and was the outcome of extensive discussion. Some delegations had expressed doubts regarding subparagraph (b): they should note, however, that the provisions of the subparagraph would not be in any way binding upon the States Parties.

63. Mrs. Volz (United States of America) agreed with the previous speaker that the text of paragraph 5 reflected a carefully drafted compromise which was better left unchanged.

64. The Chairman said that, in the absence of objection, he would take it that the Committee approved the principle embodied in subparagraph 5(a).

65. It was so agreed.

66. The Chairman invited the Committee to consider the drafting amendment to subparagraph 5(a) which had been suggested by the representative of Australia.

67. Mr. Lavina (Philippines) expressed doubts regarding the Australian amendment. The provision under discussion did not refer to the same subject as paragraph 4(c) on which the Australian wording was based.

68. Mr. Zurita (Venezuela) said that to refer in subparagraph 5(a) to "any bilateral or multilateral treaty, agreement or arrangement" and to the "requesting Party", as in subparagraph 4(c), would only cause confusion.

69. Mr. Oucharif (Morocco) said that paragraph 5(a), as amended by Australia, should be approved and paragraph 5(b) should be deleted.

70. Mr. Oстроvsky (Union of Soviet Socialist Republics) also considered that a reference to international agreements would cause confusion. The idea embodied in subparagraph (a) was that the proceeds of a confiscation would be at the disposal of the State ordering the confiscation in accordance with its domestic law. The provision laid stress on that State's priority of jurisdiction. The question whether that State entered into agreements with other States was a separate matter. He feared that the Australian amendment would weaken the provision in subparagraph (a) and urged that the text should be left unchanged.

71. The Chairman pointed out that the text of subparagraph 5(a) referred to the proceeds or property confiscated being disposed of by the Party concerned "according to its law" and administrative procedures. The words "its law" were sufficiently broad to cover all provisions having a legal value, including those arising from treaties. It was therefore not essential to set forth in detail the various types of rules mentioned in paragraph 4(c). He accordingly suggested that subparagraph 5(a) should be adopted without change.

72. Mr. Wells (Australia) said that, in order to facilitate the proceedings, he would not press his amendment, on the understanding that his delegation's position would be placed on record.

73. Mr. GuneY (Turkey) said that the principle of the primacy of international law should help to meet the concerns of the representative of Australia.

74. Mr. Abdulsami (Libyan Arab Jamahiriya) said that his delegation would prefer to leave subparagraph 5(a) unchanged.

75. Mr. Zurita (Venezuela) drew attention to the fact that in the Spanish version of subparagraph 5(a), the reference to paragraphs 1 and 4 of article 3 had been omitted.

76. The Chairman said that, in the absence of objection, he would take it that the Committee approved article 3, paragraph 5(a).

77. It was so decided.

78. The Chairman invited the Committee to consider paragraph 5(b).

79. Mr. Madden (Jamaica) said that the introductory part of subparagraph (b) was not clear. Confusion was created by the use of the expression "another Party" in the first line and the plural "the Parties" in the second line. He suggested the following rewording of the subparagraph:

"A Party which has confiscated property or proceeds on the basis of a request by another Party under paragraph 4 of this article may, on the basis of an agreement with the requesting State:"

80. As a consequential amendment, the opening word "contributing" in subparagraph (b)(i) would be replaced by "contribute" and the opening word "sharing" in subparagraph (b)(ii) by "share".

81. Mr. Bailey (Secretary of the Committee) said that the use of the words "the Parties" in the second line of subparagraph (b) was a typographical error. They should be replaced by the words "a Party".

82. Mr. Oстроvsky (Union of Soviet Socialist Republics) saw nothing to be gained from tampering with the text of subparagraph 5(b), which was the outcome of long discussion.

83. Mr. Madden (Jamaica) said that making the correction indicated by the Secretary improved the introductory part of the subparagraph, but he still found the wording somewhat unclear.

84. Article 3, paragraph 5(b), corrected as indicated by the Secretary of the Committee, was approved.

The meeting rose at 6.40 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 3 (continued)

Paragraph 6

1. The CHAIRMAN said that the three subparagraphs of paragraph 6 differentiated between proceeds or property derived from drug trafficking according to the destination of the proceeds or property concerned. Both the open-ended intergovernmental expert group and the Review Group had considered it important to specify clearly what classes of assets should be liable to confiscation.

2. Mr. GAUTIER (France) said that in all three subparagraphs the English words "shall be liable" should be rendered in French as "seront susceptibles de".

Subparagraph (a)

3. Mr. RAO (India) said that it was unclear whether the intermingled proceeds referred to in subparagraph (a) would affect property acquired from legitimate sources. The intermingling could well be such that no distinction could be drawn between what was tainted and what was not. He pointed to the analogy with smuggled goods: since the goods could not be separated into two classes, they were all liable to confiscation. Indian legislation provided a safeguard in such cases, whereby if the innocence of the holder of the goods was proved only a part of the goods was liable to confiscation, equivalent to the value of the smuggled goods.

4. Mr. LAVIÑA (Philippines) expressed strong reservations with regard to subparagraph (a). He felt that to subject property to confiscation in the manner stipulated would amount to deprivation of property without due process and would therefore be unconstitutional in many countries. Some confiscated property would be indivisible; he cited the example of a luxury boat purchased in part with tainted proceeds by co-owners acting in good faith. In such a case, he felt, confiscation would defeat the purpose of paragraph 8.

5. Mr. BROWNING (United States of America) said that the provisions in paragraph 6 lay at the heart of the money-laundering and confiscation aspects of the draft convention. They had been ardously negotiated in an attempt to balance the interests of many different legal systems, and to question them now could result in unravelling a critical component of the treaty.

6. Mrs. JONES (United Kingdom) heartily endorsed the remarks by the representative of the United States. She thought there was nothing in paragraph 6(a) rendering the bona fide interests of a third party liable to confiscation. There were various ways of safeguarding those interests under domestic law, such as buying out the share held by the part owner or the bona fide co-owner, to enable the State to recover the value derived from drug trafficking.

7. The CHAIRMAN suggested that the Committee should place on record its understanding that paragraph 6(a) should be construed in a manner which did not prejudice the application of paragraph 8.

8. It was so agreed.

9. Mr. van CAPELLE (Netherlands) agreed emphatically with the representatives of the United States and the United Kingdom. Paragraph 6(a) represented a carefully negotiated balance between the interests of those concerned and the need to fight drug traffickers. The battle against the illicit traffic had two sides to it: intercepting the substances themselves, and intercepting the proceeds. The latter aspect was crucial, because the motive of the traffickers was to acquire money, property and power.

10. Mr. BRUCE (Ghana) also approved paragraph 6(a).

11. Mr. GAUTIER (France) endorsed the remarks of the representatives of the United States, the United Kingdom and the Netherlands. The text of the paragraph represented a delicately balanced compromise which reflected the characteristics of all the legal systems affected and all the problems, direct and indirect, which might arise from transformation or intermingling. He thought the position of bona fide third parties was adequately safeguarded by paragraph 8.

12. Mr. SEKELEMANI (Botswana) said that the Committee had just agreed that paragraph 6(a) should be read as not prejudicing the application of paragraph 8. Even without that, it would have been abundantly clear from paragraph 6(a) itself that it did not affect the rights of bona fide third parties, for it stipulated that "property...shall be liable to confiscation", not that "property...shall be confiscated". That wording left a certain amount of room for manoeuvre within national legislation on ways of pursuing ill-gotten gains. He endorsed the version appearing in the revised text.

13. Mr. AL-NOWAIJER (Saudi Arabia) said he fully agreed with the comments made by the United States delegation. Subparagraph (a) had been arrived at after careful and lengthy negotiations within the open-ended intergovernmental expert group.
14. Mr. LAVIÑA (Philippines) said he would not insist on his objection to subparagraph (a) despite the undesirability of the text on legal and constitutional grounds. His country unquestionably favoured tough measures to deal with drug traffickers and provided for the use of the death penalty against them, which few countries did. The Committee should not consider the text of the draft convention produced by the Review Group as sacrosanct: the Conference’s purpose was to subject the entire text to the closest possible scrutiny.

15. Mr. MADDEN (Jamaica) agreed that the Conference had a mandate to go over the draft convention as carefully as possible. He asked whether the insertion of language in subparagraph (a) stipulating that its implementation was without prejudice to paragraph 8 would not be preferable to merely recording the Committee’s understanding on the matter. It might also be useful to specify that the meaning of the term “proceeds” in subparagraph (a) differed from the definition given in article 1, for in subparagraph (a) the term applied specifically to proceeds from illicit drug trafficking.

16. Mr. KURAA (Egypt) said that, while he did not oppose subparagraph (a), he agreed with the representative of the Philippines that the constitutions of a number of countries would not permit the provision to be put into effect.

17. Mr. CAPEK (Czechoslovakia) said he thought paragraph 8 was an effective safeguard clause in relation to subparagraph (a). He favoured the version of paragraph 6 in the original text. The word “shall” should appear in subparagraph (c) instead of the word “may”.

18. The CHAIRMAN, replying to the points raised by the representative of Jamaica, said a majority of those present appeared to endorse the Committee’s decision that the summary records should reflect its understanding of subparagraph (a) as being without prejudice to paragraph 8. As to the meaning of “proceeds”, he suggested that consideration should be given to defining the word for the purposes of article 3 as a whole. That issue could be taken up on completion of the consideration of the article.

19. If he heard no objection, he would take it that the Committee approved subparagraph (a).

20. It was so decided.

Subparagraph (b)

21. Mr. PAREJO GONZALEZ (Colombia) said that in the Spanish version of subparagraph (b), the words “podrán ser” should be replaced by the word “serán”, which corresponded better to the English word “shall”. He suggested the deletion of the phrase “in lieu of the proceeds”, which was superfluous.

22. Mr. OUCHARIF (Morocco) said it might be useful to incorporate wording in subparagraph (b) to make it clear that it applied when proceeds were transferred from one person to another—among members of a family, for example—and not just when they were transformed or converted into other property.

23. Mrs. JONES (United Kingdom) said her delegation’s understanding of the discussion on the point in the open-ended intergovernmental expert group had been that the provision applied to the recovery of property not only in the hands of an offender but also in those of anyone else, with the exception provided for in paragraph 8 regarding bona fide third parties.

24. Mr. OUCHARIF (Morocco) said he could not subscribe to the interpretation of subparagraph (b) given by the United Kingdom representative: the present wording, referring as it did to transformation and conversion of proceeds into other property, denoted operations other than the passage of proceeds from one person to another. He therefore urged that a reference to the “concealment of proceeds or their transfer to a natural or juridical person” should be incorporated in the text.

25. Mr. WELLS (Australia) said his delegation understood subparagraph (b) as applying to transfers or conversions of proceeds into other property, whether it remained in the hands of the person who had first obtained the proceeds or was passed on to another person, natural or juridical. The question of innocent acquisition by third parties was adequately covered in paragraph 8. He therefore saw no need for an amendment like the one proposed by the Moroccan delegation.

26. Mr. van CAPELLE (Netherlands) endorsed the views expressed by the representative of Australia.

27. The CHAIRMAN said that if he heard no objection, he would take it that the Committee approved subparagraph (b) on the understanding that it provided for the confiscation of proceeds whether they were still in the hands of the offender or had been passed on to another natural or juridical person.

28. It was so decided.

Subparagraph (c) (E/CONF.82/C.1/L.20)

29. Mr. AL-OZAIR (Yemen) said that his delegation’s amendment to subparagraph (c) (E/CONF.82/C.1/L.20) addressed the question of translating the word “property” into Arabic and was also intended to make it clear that the subparagraph covered property and all forms of income derived from it—for example, the interest on capital deposited in a bank.

30. Mr. BRUCE (Ghana) said that in his view the wording proposed by Yemen would make no substantive change in the meaning of the paragraph. His delegation thought that the words “clearly identified as being” should be deleted from the original text and that the use of “may” at the end of the sentence instead of “shall” would obviate the risk of wrongful deprivation of property.

31. Mr. AL-NOWAISER (Saudi Arabia) said that, with regard to the original version, his delegation favoured the removal of the square brackets in the introductory wording.
and the use of the word “may” instead of “shall” at the end of the subparagraph. It thought that the proposal by Yemen in document E/CONF.82/C.1/L.20 to use the words “property with which proceeds have been intermingled up to the value of the proceeds” was in conformity with decisions already reached regarding other provisions.

32. Mr. YBAÑEZ (Spain) said that his delegation favoured the removal of the square brackets in the introductory wording. Bearing in mind the language of the Spanish Penal Code, his delegation preferred the word “shall” to the word “may”.

33. Mr. KANDEMIR (Turkey) said that, since the aim of the draft convention was deterrent, it would be best to delete the words in square brackets in the introductory wording of subparagraph (c) and to use “shall” instead of “may” at the end of the sentence.

34. Mr. SUN Lin (China) said that his delegation favoured the inclusion of the words “clearly identified as being”, which would make the text more emphatic. They should also satisfy the concern of those who thought that some violation of legitimate ownership might arise from the application of paragraph 6. His delegation too preferred the use of the word “shall” at the end of the sentence.

35. Mr. OUCHARIF (Morocco) said that the amendment submitted by Yemen was in keeping with the spirit and the wording of subparagraphs (a) and (b). The logical requirement was that the measures referred to in the article should be taken automatically, and thus the words “shall be liable” proposed by Yemen were appropriate. His delegation supported the proposal by Yemen.

36. Mr. BOBIASZ (Canada) said that his delegation supported subparagraph (c) as proposed by the Review Group. The words in brackets in the introductory phrase were unnecessary because paragraph 9 would permit States to take action under paragraph 6(c) in accordance with their domestic legislation. His delegation preferred the use of the word “shall” to “may”.

37. Mr. BROWNING (United States of America) said that his delegation felt that the words in brackets in the introductory wording to subparagraph (c) represented an unnecessary restriction and should be removed. They concerned a matter better left to domestic law than dealt with in an international instrument. His delegation also preferred the use of the word “shall” at the end of the subparagraph.

38. Mr. POPOV (Bulgaria) said that his delegation favoured the original text of subparagraph (c) and supported the views expressed by the delegations of Canada and the United States. The words “clearly identified as being” should be deleted. His delegation also preferred the use of the word “shall”.

39. Mrs. JONES (United Kingdom) said that her delegation also favoured the deletion of the words “clearly identified as being” and the use of the word “shall” instead of “may”.

40. Mr. WOTAVA (Austria) said that his delegation favoured the inclusion of the words “identified as being” but saw no need for the word “clearly”, which would not assist judicial procedure. His delegation preferred the word “may” to the word “shall” at the end of the subparagraph.

41. Mr. IGARASHI (Japan) said that his delegation also preferred the word “may”. That was because mandatory formulation of subparagraph (c) would be too far-reaching; it would require a Party to confiscate regardless of the nature of the activities producing the income or other benefit, would place undue influence on normal business and might infringe upon the interests of third parties.

42. Mr. ABDULSAMI (Libyan Arab Jamahiriya) said that his delegation supported the amendment submitted by Yemen.

43. Mr. BAEYENS (France) said that his delegation felt that the words “clearly identified as being” added nothing useful to the text. It preferred to see the word “may” at the end of subparagraph (c).

44. Mr. von HENGSTENBERG (Federal Republic of Germany) said that his delegation favoured the deletion of the square brackets in the introductory wording. It could accept use of the word “shall” in the final line if, after the words “such measures”, the words “to the extent that proceeds have been derived from an offence” were inserted. If that suggestion was not accepted, his delegation would prefer the use of the word “may”.

45. Mr. VETTOVAGLIA (Switzerland) said that while the words “shall be liable” were perfectly acceptable to the Swiss delegation in subparagraph 6(a), their use in subparagraph (c) would go too far for Swiss legislation. His delegation therefore preferred the word “may” at the end of the provision.

46. Mr. KAPELRUD (Norway) said that his delegation favoured the deletion of the words “clearly identified as being”. It considered that the term “shall” at the end of subparagraph (c) made the provision more forceful.

47. Mr. WELLS (Australia) said that he too was in favour of the deletion of the words “clearly identified as being”. In addition, he preferred “shall” to “may”, pointing out that it imposed a liability to take measures of confiscation but not an obligation to do so in all cases. He drew attention to the usefulness of the words “other benefits”, in that some countries did not regard a bonus issue of shares, for instance, as income.

48. Mr. AL-WAHAIBI (Oman) said that he preferred the word “may” to “shall” at the end of subparagraph (c). That would also be the case if the Committee opted for the amendment submitted by Yemen.

49. Mr. BOBIASZ (Canada) said that he could accept the Federal German proposal in that it merely made explicit what he took the subparagraph to mean as it stood. In that connection he drew attention to the definition of
“proceeds” proposed by his country and the United States in annex IV to document E/CONF.82/3 (p. 108), which stated that proceeds meant any property derived from or obtained, directly or indirectly, through the commission of an offence provided for in the convention.

50. The CHAIRMAN said he took it that the Committee was prepared to approve paragraph 6(c) with the deletion of the words “clearly identified as being”; with the use of “shall” and not “may” before the words “also be liable”, on the understanding that it did not imply an obligation to confiscate in all cases; and with the addition of the words “to the extent that proceeds have been derived from an offence” after the words “such measures”, subject to the definition of “proceeds” to be approved later.

51. It was so agreed.

52. Mr. VETTOVAGLIA (Switzerland) reserved his position on paragraph 6 until the definitive French translation of the words “shall be liable” was available.

53. Mr. IGARASHI (Japan) maintained the reservation he had expressed regarding the word “shall”.

54. Mr. GAUTIER (France) reiterated the comment he had made at the beginning of the meeting in regard to the French translation of the words “shall be liable”.

55. Mr. LAVIÑA (Philippines) expressed reservations regarding the confiscation of property with which proceeds had been intermingled, since it violated the principle of due process.

56. Mr. WOTAVA (Austria) said that although the text of paragraph 6 had been improved, he still had reservations regarding the use of the word “shall”.

Paragraph 7

57. Mr. LAVIÑA (Philippines) said that the reference to the onus of proof raised the whole issue of the rights of the accused under criminal law. To reverse that onus in relation to the confiscation of proceeds or property would run counter to his country’s constitutional system. In his view, paragraph 7 was ill-conceived and dealt with a matter which should be left to the domestic legislation of the Parties.

58. Mr. OUCHARIF (Morocco) agreed. Questions such as the onus of proof were best left to the courts of each Party to decide.

59. Mr. van CAPELLE (Netherlands) said that he approved paragraph 7 since it would give a country wishing to reverse the onus of proof in the type of case under consideration the support of an international instrument.

60. Mrs. JONES (United Kingdom) associated herself with the views of the previous speaker.

The meeting rose at 1 p.m.

11th meeting

Friday, 2 December 1988, at 3.25 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 3 (continued)

Paragraph 7

1. The CHAIRMAN observed that paragraph 7, which dealt with the reversal of the onus of proof regarding the legitimacy of proceeds or other property liable to confiscation, would not create any obligation for the States Parties to introduce such a reversal, or even to consider introducing it. The provision constituted merely an invitation to States Parties to examine the possibility of doing so. Moreover, the concluding words made it clear that such action had to be “consistent with the principles” of the domestic law of the country concerned and with the nature of the judicial proceedings. Paragraph 7 thus related to cases where the reversal of proof in question could be considered without infringing the legal principles in force in the country concerned.

2. Mr. RAO (India) proposed that the words “judicial proceedings” at the end of the paragraph should be replaced by “judicial and other proceedings”. That change would take into account the fact that, in a number of other provisions, the reference to “Courts” had been replaced by a reference to “Courts and other competent authorities”.

3. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved paragraph 7, amended as proposed by the Indian representative.

4. It was so decided.
Paragraph 8 (E/CONF.82/C.1/L.11, L.20)

5. Mr. EL-OZAIR (Yemen), introducing his delegation's amendment to paragraph 8 (E/CONF.82/C.1/L.20), said that its purpose was to limit the rights of bona fide third parties to the value actually paid.

6. Mr. van CAPELLE (Netherlands), introducing his delegation's amendment (E/CONF.82/C.1/L.11), said that the position of third parties was a crucial question. In the absence of proper regulation of their position, the new convention would be greatly weakened. It was common for proceeds of trafficking to be transferred to allegedly bona fide third parties in the form of gifts to relatives, payments to own companies or transfers between entities owned by the same persons. In their struggle against fraud, law enforcement authorities had to face the ingenuity of the traffickers, who were constantly inventing new ways of concealing the proceeds of their operations behind the facade of allegedly bona fide third parties.

7. The purpose of the Netherlands amendment was to curb the misuse of third parties. It envisaged the possibility of reversing the onus of proof where there were justified grounds for inviting the owner of property to give a satisfactory account of the origin of that ownership. There were obviously situations in which it was not right that the law enforcement authorities should have to bear alone the burden of proof.

8. The CHAIRMAN suggested that the Committee should consider approving paragraph 8 first, with or without the amendment of Yemen, and only then consider the Netherlands amendment, which constituted a separate element embodying a different concept.

9. The CHAIRMAN said he understood it to be the intention of the Committee that paragraph 8 of article 3 should not be prejudiced either by paragraph 1 or by paragraph 6 of the article.

10. In the absence of objection he would take it that the Committee approved paragraph 8 as it appeared in document E/CONF.82/3.

11. It was so decided.

12. The CHAIRMAN invited the Committee to consider the additional sentence proposed by the Netherlands (E/CONF.82/C.1/L.11).

13. Mr. AL-MUBARANI (Kuwait) pointed out that the Arabic version of the Netherlands amendment had only just been distributed.

14. The CHAIRMAN said that consideration of the Netherlands amendment would be postponed for a brief period. The Committee could meanwhile consider paragraph 9.

Paragraph 9

15. Mr. ASSAD (Islamic Republic of Iran) expressed full support for the provision embodied in paragraph 9.

16. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved paragraph 9.

17. It was so decided.

Paragraph 8 (resumed) (E/CONF.82/C.1/L.11)

18. The CHAIRMAN noted that the text proposed by the Netherlands took the same form as paragraph 7. It constituted an invitation to the Parties to consider adopting the legislation indicated.

19. Mr. MADDEN (Jamaica) said that his delegation approved the concept embodied in the Netherlands amendment. He had some difficulty, however, with the wording. For example, in using the formula "transferring ownership rights" the text did not make clear whether it was referring to the transferor or to the transferee, or to both. It was, in his view, generally preferable in such texts to use nouns rather than verbs.

20. Mr. RAO (India) proposed that the expression "whether Parties" in the Netherlands amendment should be expanded to read: "whether or not Parties". He also suggested that reference should be made in the provision to the acquiring of rights. Lastly, he proposed that the concluding words "property constituting proceeds" should be amended to read: "property or proceeds".

21. With regard to the substance, he felt strongly that the question of laundering money was one area in which the concept of reversal of proof was very much called for. Unlike blue-collar crime, white-collar crime was a realm in which the criminal was not always visible. The reversal of the onus of proof was therefore essential.

22. Mr. AL-NOWAISER (Saudi Arabia) said that the Netherlands amendment would introduce an element of complication into paragraph 8, which the Committee had approved. He urged that paragraph 8 should be retained as approved, without the addition proposed by the Netherlands, since it conveyed adequately the principle to be laid down.

23. Mr. GONZALEZ-FELIX (Mexico) said that his delegation had no difficulty in approving the Netherlands amendment, which did not contain any mandatory provision and in any case included a proviso referring to the principles of domestic law.

24. Mr. WOTAVA (Austria) said that, despite the fact that the provision in the Netherlands amendment was not mandatory, his delegation would be very reluctant to accept it. It was alarmed to see reversal of the onus of proof suggested for the second time. In many countries, including his own, the rule concerning onus of proof and presumption of innocence was a fundamental element of the legal system. It was therefore disturbing to see the possibility of reversal of the onus of proof being envisaged. His delegation therefore opposed the Netherlands amendment.
25. Mr. BOBIASZ (Canada) pointed out that the purpose of the Netherlands amendment was different from that of paragraph 8, which was complete in itself in the form in which the Committee had approved it. He therefore suggested that the text proposed by the Netherlands should form a separate paragraph 7 bis, following paragraph 7. In that way, the important principle embodied in paragraph 8 would not be clouded by the ancillary procedural matter contained in the Netherlands amendment.

26. Mr. OSTROVSKY (Union of Soviet Socialist Republics) said that the Netherlands amendment was unacceptable to his delegation on grounds of principle. It was quite inappropriate to invite States to consider introducing the relevant legislation “if particular circumstances so warrant”. Surely, sovereign States were free to introduce legislation without any such qualification.

27. Moreover, the suggested reversal of the onus of proof was inconsistent with the provision in paragraph 9, which safeguarded the domestic law of the Parties.

28. He accordingly urged the Netherlands representative not to press his delegation’s amendment.

29. Mr. ABDULSAM (Libyan Arab Jamahiriya) said that his delegation preferred paragraph 8 in its present form, without the Netherlands amendment.

30. Mr. OUCHARIF (Morocco) said that his delegation could not support the Netherlands amendment.

31. Mr. von HENGSTENBERG (Federal Republic of Germany) said that notwithstanding the optional nature of the provision in the Netherlands amendment, it could create difficulties for his country in connection with certain bilateral agreements providing for reciprocity. He favoured the retention of paragraph 8 as drafted.

32. Mr. RAO (India) suggested the interchanging of paragraphs 7 and 8 of the original draft. The result would be a more logical sequence that might meet the concern of the Netherlands delegation.

33. Mr. AL-SHARAIDRA (Jordan) expressed himself in favour of paragraph 8 as drafted.

34. Mrs. JONES (United Kingdom) said that the provision in the Netherlands amendment, like that in paragraph 7 of the draft, could prove useful, if domestic law permitted. She expressed sympathy with the idea put forward by the representative of Canada, which might perhaps be examined by the Drafting Committee. With regard to the point raised by the representative of Jamaica, she said it was her understanding that the major concern in the Netherlands amendment was with the transaction: both transferee and transferor were addressed in the provision.

35. Mr. GAUTIER (France) said that his country’s concerns were similar to those of the Federal Republic of Germany. He, too, favoured retention of the original text of paragraph 8, which he found both clear and comprehensive.

36. Mr. WOTAVA (Austria) asked whether the provisions of the Netherlands amendment, and perhaps of paragraph 7, were not perhaps in contradiction with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

37. Mr. AL-WAHAIBI (Oman) said that his delegation could accept the Netherlands amendment in principle particularly since it was not mandatory. The thrust of the Netherlands proposal was consonant with the concern reflected in paragraph 8.

38. Mr. WELLS (Australia) pointed out that while paragraph 7 as drafted in document E/CONF.82/3 focused on the question of the legitimacy of proceeds or other property liable to confiscation, the proposal by the Netherlands addressed the issue of whether or not the property constituting proceeds had been acquired in good faith. He believed that the substance of the Netherlands proposal might be incorporated in paragraph 7 which, as the representative of India had suggested, might be interchanged with what was at present paragraph 8.

39. Mr. LAVINA (Philippines) observed that although the idea underlying the Netherlands proposal was commendable, the text of article 3 had already reached a length which made the incorporation of additional elements a questionable exercise. Furthermore, he was sure that Parties to the convention could be relied upon to do their best to ensure that the principles of their domestic law were consistent with the provisions of the convention. He favoured the text of paragraph 8 as drafted in document E/CONF.82/3.

40. Mr. MAHMUD (Iraq) also considered that paragraph 8 should be retained as drafted. He agreed with the representative of India that it might be interchanged with paragraph 7.

41. The CHAIRMAN noted that many speakers had argued in favour of retaining paragraph 8 as drafted in document E/CONF.82/3, while many of those who had spoken in favour of the text proposed in the Netherlands amendment had suggested that it should be incorporated in paragraph 7. In the absence of objection he would take it that the Committee approved the retention of paragraph 8 in its original form.

42. It was so agreed.

43. The CHAIRMAN asked whether the Committee wished to reconsider paragraph 7 with a view to making an addition to it.

44. Mr. van CAPELLE (Netherlands) said that, while his delegation was not pressing its amendment, he had envisaged the possibility of reconsideration of paragraph 7 in the light of the proposal contained in the amendment. He believed that some other delegations shared the same idea.

45. Mr. GAUTIER (France), supported by Mr. OSTROVSKY (Union of Soviet Socialist Republics) and
Mr. AL-NOWAISER (Saudi Arabia), asked how it would be possible, procedurally, to reconsider paragraph 7.

46. Mr. LAVIÑA (Philippines) shared the previous speakers' concern with procedure. Moreover, further consideration of the Netherlands proposal in the context of paragraph 7 was unlikely to modify the reservations of certain delegations as far as both that proposal and that paragraph were concerned.

47. Mr. von HENGSTENBERG (Federal Republic of Germany) said that although there could be no procedural objection to the drafting by any delegation of any new wording for paragraph 7, that might be regrettable in view of the limited time that would be available for its consideration. Moreover, any modification of the agreed text of paragraph 7 might lead to requests for further consideration of paragraph 8.

48. Mr. WELLS (Australia) suggested that the point addressed in the Netherlands amendment might be covered by a small amendment to paragraph 7, which would in no way affect the earlier agreed text. Paragraph 7 could read as follows:

"7. Each Party may consider ensuring that the onus of proof be reversed regarding:

(a) the legitimacy of proceeds or other property liable to confiscation;

(b) whether or not proceeds or property liable to confiscation were acquired in good faith, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial proceedings."

49. The CHAIRMAN, in response to questions from Mr. GONZALEZ-FELIX (Mexico) and Mr. OSTROVSKY (Union of Soviet Socialist Republics), said it was his understanding that in the text just suggested by the Australian representative the final safeguard clause, beginning with the words "to the extent that . . .", was intended to be applicable to both subparagraphs (a) and (b).

50. Mr. RAO (India) said that if the text of paragraph 7 was to be reconsidered, he would propose the insertion, after the word "confiscation", of the words "and/or including the rights of bona fide third parties".

51. Mr. AL-NOWAISER (Saudi Arabia) said that the Committee appeared to be making matters increasingly difficult for itself. His delegation believed that a decision had already been taken on paragraph 7. It would prefer to see the text of that paragraph, as approved, retained.

52. The CHAIRMAN suggested that the Committee should reconsider its earlier decision concerning paragraph 7, which would remain in the text as drafted, with the insertion of the words "and other" between "judicial" and "proceedings".

53. It was so agreed.
59. Mr. LAVIÑA (Philippines) agreed with the representative of India that the concept of "property" was broader than that of "proceeds", since "proceeds" derived from a criminal act. "Proceeds" should be so defined in article 1, for otherwise the term would have to be defined each time it was used in article 3. He favoured the deletion of the phrase "any other thing". He found it hard to imagine any "property" which was not an "asset", and if there were any such, it should be described under the definition of "property". Property was in fact anything of value.

60. Mr. SUN Lin (China) agreed with the Chairman’s analysis. He supported the definitions proposed by Canada and the United States in principle and had no difficulty in accepting the phrase "any other thing".

61. Mr. PAREJO GONZALEZ (Colombia) also supported the definitions proposed by Canada and the United States; a separate definition of "proceeds" indicating that they were derived from an offence was essential to the convention.

62. Mr. WELLS (Australia) expressed his full support for the definitions proposed by Canada and the United States. He also supported the Chairman’s view that there should be a separate definition of "proceeds". Regarding the phrase "any other thing", he observed that some "assets" might be described by an accountant as "liabilities", yet it might still be desirable to confiscate them.

63. Mr. KANDEMIR (Turkey) favoured a neutral wording of the definitions. He agreed with the Chairman that "proceeds" were "assets" derived from an offence under the convention; he therefore supported the proposals by Canada and the United States.

64. Mr. BRUCE (Ghana) and Mr. MGBKWERE (Nigeria) also supported the proposals of Canada and the United States.

65. Mrs. VILLALOBOS (Costa Rica) said that "proceeds" must be defined as being derived from illicit traffic.

66. Mr. SUCHARIKUL (Thailand) supported the proposals of Canada and the United States, but he pointed out that definition of property varied from one national legislation to another. Some reference to domestic law should therefore perhaps be included in the definition. It was quite correct in his view to define "proceeds" as "property" illegally derived.

67. Mr. RAO (India) expressed his readiness to join any consensus on the definitions. However, while he appreciated the clarification that "proceeds" must be derived from an offence, "property" could also be so derived, and it was therefore desirable to include a reference to "proceeds" in the definition of "property".

68. Mr. YBANÉZ (Spain) welcomed the clarification which had been given of the terms "proceeds" and "assets". He felt, however, that the definitions should also refer to "instrumentalities".

69. The CHAIRMAN drew attention to the fact that the proposal of Canada and the United States included a definition of "instrumentalities".

70. Mrs. JONES (United Kingdom) supported the three definitions proposed by Canada and the United States. The definitions were both broad and neutral, and it was eminently sensible to define "proceeds" by their derivation and "instrumentalities" by their use.

71. Mr. BROWNING (United States of America) recommended that the phrase "any other thing" be retained in the proposed definitions for the reasons given by the representative of Australia. Its deletion would limit the scope of the provisions of article 3, and reduce flexibility.

72. Mr. BOBIASZ (Canada) supported the remarks of the United States representative. In his view the phrase "any other thing" did no harm to logic, and none to the draft convention.

73. Mr. van ITERSON (Netherlands) supported the concept of the separation of "proceeds" and "property" in the proposal of Canada and the United States, but he suggested that the phrase "any other thing" should be deleted.

74. Mr. IGARASHI (Japan) supported the principle that "proceeds" should be defined as "property" derived from an offence, but he drew attention to the difficulties which use of the phrase "directly or indirectly obtained" would pose for courts. It was his understanding that article 3, paragraph 6, made clear the scope of "proceeds".

75. Mr. ABDULSAMI (Libyan Arab Jamahiriya) supported the definition of "property" in the proposal of Canada and the United States but found the phrase "any other thing" unclear.

76. Mr. MADDEN (Jamaica) supported the definition of "property" in the proposal of Canada and the United States.

77. Mr. MGBKWERE (Nigeria) said he was somewhat concerned as to the scope of the phrase "any other thing". However, the success of the new convention would depend on the Parties’ ability to enforce confiscation and he therefore believed the phrase should be retained.

78. Mr. AL-NOWAISER (Saudi Arabia) supported the definition of "property" proposed by Canada and the United States, although he too was concerned about the scope of the expression "any other thing".

79. Mr. YBAÑEZ (Spain) said that he had no objection to the ideas contained in the definitions proposed by Canada and the United States. He drew attention, however, to the existence of problems of translation of the definitions into languages other than English.

80. Mr. BOBIASZ (Canada) said that his delegation and that of the United States were prepared to eliminate the phrase "and any other thing" from their proposed
definition if the Drafting Committee could find no solution to the translation problem just mentioned. The Drafting Committee should in his view be informed that the definition of "property" should be as broad as possible.

81. Mr. PAREJO GONZALEZ (Colombia) said that since the sponsors of the new definitions proposed were prepared to withdraw the words "and any other thing", it was up to the Committee to find an alternative formula.

82. Mr. MARTINI (Guatemala) said that the term "bienes" used in the Spanish version of the proposed definition covered items which were liable to appropriation. That would in fact include substances such as air which existed but were not property.

83. Mr. BROWNING (United States of America) said that it had been the intention of the sponsors of the proposed new definition that the broadest meaning be given to the word "assets". Whatever decision was reached, the term "property" should be given the widest possible definition for the purposes of the convention.

84. Mr. YBÁNEZ (Spain) said that, in the case of the jointly proposed definition of "property", the only problem for the Spanish version was the translation of the English word "thing", for which he thought the word "objeto" might be suitable. The matter should be left to the Drafting Committee.

85. Mr. BOBIASZ (Canada) supported the proposal of the representative of Spain.

86. Mr. von HENGSTENBERG (Federal Republic of Germany) said that he supported the joint proposal in general, but did not see any need to replace the deleted phrase "and any other thing" by some alternative words.

87. Mr. AL-NOWAISER (Saudi Arabia) said that the proposed definition seemed to him perfectly comprehensive without the words "and any other thing".

88. The CHAIRMAN said that, if the matter was to be referred to the Drafting Committee, the latter should be given clear instructions. He suggested that those instructions should be to delete the words "and any other thing" and to ensure that the word "assets" was given the widest possible meaning in all the language versions.

89. Mr. OUCHARIF (Morocco) agreed with the Chairman. He favoured deleting also the words "and deeds or instruments".

90. Mr. BROWNING (United States of America) said that deeds and instruments were a form of property. He urged the Committee to retain those words in order to ensure that the convention was as comprehensive as possible.

91. Mr. ZVONKO (Byelorussian Soviet Socialist Republic) asked for an explanation of the term "deeds".

92. Mr. BOBIASZ (Canada) explained that the phrase "deeds or instruments" referred to any legal documents which would authorize the holder or bearer to make use of the mere fact of having possession of those deeds or instruments to gain access to an object of value. The terms for that notion might of course vary from legal system to legal system, but he was confident that the question could be settled by the Drafting Committee.

93. Mr. OSTROVSKY (Union of Soviet Socialist Republics) asked whether, if "deeds" had the meaning of documents, the term "instruments" alone would not be sufficient.

94. Mr. POPOV (Bulgaria) said that he had difficulty in understanding the definition of "property" proposed by the United States and Canada, as it appeared on on page 98 of the Russian version of document E/CONF.82/3. He therefore proposed that a decision on the question under consideration should be deferred until a later meeting.

95. Mr. BOBIASZ (Canada) said that his delegation could agree to the deletion of the reference to "deeds" in the proposed definition.

96. Mr. OUCHARIF (Morocco) said that, under Moroccan law deeds and instruments were not regarded as property, but rather as "tools" to show ownership, a means of demonstrating title. How was it possible for means of demonstrating title to be subject to confiscation? In his view, deletion of the complete phrase "deeds and instruments" would impart flexibility to the definition and enable the Committee to reach a consensus.

97. Mr. BROWNING (United States of America) said that he agreed to some extent that deeds and instruments were means of demonstrating an interest in property. Deeds related to real property, whereas instruments related to intangibles. His delegation's priority aim had been and was to give the widest possible scope to the definition.

98. Mr. GAUTIER (France) supported the Bulgarian representative's proposal that further discussion of the matter be deferred.

99. Mr. POPOV (Bulgaria) suggested, as a last point, that the words "of every description" to which objection had been raised, might be replaced by the words "of every kind".

100. The CHAIRMAN said it was his understanding that the Committee wished to defer a decision on the definitions under discussion until a later meeting.

101. It was so agreed.

The meeting rose at 6.15 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLECIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 1 (continued)

"Property" (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the definition of the term “property” proposed by Canada and the United States in document E/CONF.82/3 (p. 108).

2. Mr. POPOV (Bulgaria) reminded the Committee of his proposal at the previous meeting (E/CONF.82/C.1/SR.11, para. 99) that the word “description" should be replaced by the word “kind". A more difficult problem arose with the word “deeds", which had several meanings. The Russian text of the definition referred to “dejstviya i dokumenty", neither of which terms implied liability to confiscation. It seemed clear that the sponsors of the proposal had intended to refer to legal documents; consequently, in order to avoid misunderstanding, he suggested that the words “deeds or instruments" should be replaced by the term “legal documents" or alternatively by “legal documents or instruments"; deciding on the more appropriate of those two formulations was a matter he would leave to specialists of English mother tongue.

3. Mr. AL-NOWAIJER (Saudi Arabia) supported the proposal made at the previous meeting (E/CONF.82/C.1/SR.11, para. 55) to delete the words “and any other thing" and the words “or other things". So far as the expression “deeds or instruments" was concerned, he suggested its replacement by the single word “documents", which in Arabic was comprehensive enough to cover all manner of deeds of purchase or sale, cheques, and so on.

4. Mr. BROWNING (United States of America) said that he found both the Bulgarian proposals acceptable. The intention behind the use of the expression “deeds or instruments" in the joint Canadian-United States proposal had been to employ the most comprehensive term possible: “legal documents" satisfied that criterion.

5. Mr. OUCHARIF (Morocco) said that his delegation’s chief concern was that the Committee should approve a term that was general enough to cover deeds, documents and instruments of every kind. He therefore supported the proposal by the representative of Saudi Arabia to replace the expression “deeds or instruments" by the term “documents", which was sufficiently comprehensive. However, in order to avoid a conflict between the stipulations of the convention and those of national legislation, he suggested that the reference to documents should be qualified by a phrase such as “when appropriate”.

6. Mr. FOFANNA (Senegal) supported the proposal to replace the words “deeds or instruments" by the expression “legal documents" or “legal documents or instruments".

7. Mr. PAREJO GONZALEZ (Colombia) said that the term “escrituras públicas o privadas" used in the Spanish version of the joint proposal was satisfactory; he could also accept the expression “legal documents or instruments". With regard to the deletion of the words “and any other thing" , he reminded the Committee that he had suggested at the previous meeting (E/CONF.82/C.2/SR.11, para. 81) that alternatives for them should be found since it was important not to leave any gap between the definitions of “property” and “proceeds”. Finally, he could support the proposal to replace the word “description" by the word “kind"; that change would not affect the Spanish version.

8. Mr. MAHMOUD (Iraq) agreed to the replacement of the term “deeds or instruments" by the words “legal documents" and to the deletion of the references to “other things".

9. Mr. BROWNING (United States of America) suggested that, in order to meet the point raised by the delegate of Morocco, the words “and deeds or instruments" should read: “and includes, if appropriate, legal documents or instruments”.

10. Mr. BRUCE (Ghana) welcomed the proposal to replace the words “deeds or instruments" by the term “legal documents", which was broad enough to cover the sort of evidence that had to be presented to a court before property could be confiscated. However, he considered that the use of the words “if appropriate" was unnecessary and would weaken the text. As he saw it, the courts in each country were competent to decide whether a particular legal document was appropriate or not.

11. Mr. LAVIJA (Philippines) said he would welcome the replacement of the word “description" by “kind", the deletion of the words “and any other thing" and “or other things", and the replacement of the term “deeds or instruments" by the expression “legal documents or instruments". Like the representative of Ghana, he opposed the insertion of the words “if appropriate", which were inelegant and merely confused the issue. Legal documents or instruments that were not appropriate were obviously not contemplated by the definition. Moreover, the application of all the articles of the convention would be subject to domestic law.

12. Mr. OUCHARIF (Morocco) endorsed the United States sub-amendment, which would make allowance for the differing provisions of national legislation.
13. Mr. KURAA (Egypt) said that legal documents evidencing title to, or interest in, assets could not strictly be regarded as property. They were merely evidence of property and accordingly should not be included in the definition.

14. The CHAIRMAN pointed out that the definitions in article 1 had to be considered in relation to the other articles of the draft. For the purposes of article 3, for example, property had to be defined in such a way as to make it subject to confiscation.

15. In the light of the discussion he invited the Committee to approve the following definition of property: "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;".

16. It was so decided.

"Proceeds" (continued)

17. The CHAIRMAN invited the Committee to continue its consideration of the definition of the term "proceeds" proposed by Canada and the United States in document E/CONF.82/3 (p. 108). His understanding was that there had to be separate definitions of "proceeds" and "property" in order to take account of the source of tainted property.

18. Mr. IGARASHI (Japan) proposed the deletion of the words "directly or indirectly".

19. Mr. van ITerson (Netherlands) suggested the replacement of the words "this Convention" by the words "article 2 of this Convention", since all the offences concerned were defined in that article.

20. Mr. MAHMOUD (Iraq) supported the Japanese and Netherlands proposals.

21. Mr. WOTAVA (Austria) also supported the Japanese proposal. The words "or indirectly" were vague and might hinder the submission of evidence in judicial proceedings.

22. Mr. BAEyENS (France) approved the change proposed by the representative of the Netherlands. He also supported the proposal to delete the words "directly or indirectly", since he did not understand how proceeds could be indirect; either a profit was made or it was not. He agreed with the representative of Austria that the word "indirectly" might cause difficulty in judicial proceedings.

23. Mr. BOBIASZ (Canada) approved the Japanese and Netherlands proposals.

24. Mr. LAVINA (Philippines) said he had no objection to the deletion of the words "directly or indirectly". Whether those words appeared in the definition or not, the property derived from the commission of an offence would include property acquired from both direct and indirect sources. The courts would have their own procedures for determining the means whereby the property had been acquired. He suggested the deletion of the words "established in accordance with this Convention", since they were superfluous.

25. Mr. ERNER (Turkey) approved the proposal to delete the words "directly or indirectly". He did not object to the idea of adding a reference to article 2 but pointed out that the text of that article had not been finalized.

26. Mr. PAREJO GONZALEZ (Colombia) favoured the retention of the words "directly or indirectly"; they gave a stronger definition which would cover all the sources of illicitly acquired property. He approved the proposed addition of a reference to article 2.

27. Mr. WELLS (Australia) said that the phrase "directly or indirectly" should be retained. Intermingled property was sufficiently described in article 3, paragraph 6, of the basic text, but before tainted property had reached that stage various steps might occur at law in its transmission—for example, the distribution of profits to shareholders by a company—and without the words "directly or indirectly" in the definition there would be no wording in the draft to cover those steps. Moreover, confiscation was not necessarily implied by the terms of article 5, paragraph 3(g). It would be for each country's domestic legal system to apply the notion of indirect acquisition in practice.

28. Mr. OUCHARIF (Morocco) said he was satisfied with the joint proposal as it stood. He too favoured the retention of the words "directly or indirectly", which were broad enough to permit courts to entertain evidence of the acquisition of proceeds from any source whatsoever. The text of the joint proposal appeared to encompass cases of intermingled proceeds and he could accept it on that basis.

29. Mrs. JONES (United Kingdom) agreed with the amendment proposed by the representative of the Netherlands. She favoured the retention of the words "directly or indirectly", which emphasized the various devices that existed for concealment of property.

30. Mr. MADDEN (Jamaica) said he was uncertain whether concealment of property under article 2 would be covered by the words "directly or indirectly". It had previously been said that the definition of proceeds derived from drug trafficking would have to be spelt out in article 3. If that was done, and if the joint definition at present under discussion was found generally acceptable, the words "derived from... an offence" might perhaps be dropped from it. He made that point because under draft article 3, paragraph 4(b), measures relating to proceeds were to be taken at a stage prior to conviction; to define proceeds as "derived from... the commission of an offence" might therefore be precipitate.

31. Mr. BROWNING (United States of America) said he believed the words "directly or indirectly" would help to focus attention on the scope of the proceeds subject to confiscation, but his delegation, like that of Canada, could agree to their deletion from the joint proposal if a consensus emerged in favour of that course.
32. Mr. TARANENKO (Ukrainian Soviet Socialist Republic) said that his delegation would like to see the words “directly or indirectly”, or at any rate the word “directly”, deleted. It supported the proposal to include a reference to article 2, since the offences established under the convention formed a much broader category than those encompassed in article 2.

33. Mr. METAXAS (Greece), supported by Mr. AL-MUBARAKI (Kuwait), favoured the retention of the idea expressed by the word “indirectly”.

34. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that he thought the words “directly or indirectly” should be retained; their sense was implicit in the text of article 2.

35. Mr. CAPEK (Czechoslovakia) said the word “indirectly” might be thought to bear some connection with the rights of third parties who had acquired property in good faith. Those rights were, of course, protected by draft article 3, paragraph 8 of the convention.

36. Mr. KAPELRUD (Norway) said that the words “directly or indirectly” should be retained. They were relevant both to article 3 and to article 5.

37. Mr. GONZALEZ FELIX (Mexico) said that he too thought the words should be retained. They were one of the purposes of the convention to deal with financial gains acquired by a variety of ingenious methods. Indirect proceeds were an important part of those gains.

38. Mrs. BERKE (Sweden) favoured the retention of the entire phrase.

39. Mrs. MOLOKWU (Nigeria) agreed; she felt that the phrase strengthened the measures contemplated for policing drug trafficking.

40. Mr. SIBLESZ (Netherlands) said he had no strong views on the point since the words “derived from” were sufficiently broad in themselves. The powers of confiscation available to Parties under article 3, paragraph 6, extended to intermingled and transferred property and to other assets derived from proceeds of any kind.

41. Mr. FAIOLA (Italy) said that he favoured the retention of the words “directly or indirectly”.

42. Mr. WOTAVA (Austria) said that he did not understand how the notion of “directly or indirectly” could be contained in the words “derived from”. He reiterated his previous comment on the point.

43. Mr. AL-SHARARDHA (Jordan) approved the inclusion of the word “indirectly”, which would cover all possible devices to transform or convert proceeds.

44. Mr. IGARASHI (Japan) drew attention to the fact that the open-ended intergovernmental expert group had decided not to include the words “directly or indirectly” in article 2. Moreover, as indicated by other representatives, the scope of proceeds subject to confiscation was laid down in article 3, paragraph 6. The words “directly or indirectly” were ambiguous and some countries might have difficulty in incorporating a definition containing those terms in their domestic legislation. They should therefore be deleted.

45. Mr. GAUTIER (France) said he fully agreed with the representatives of Austria and Japan. The use of the words “directly or indirectly” would introduce into the definition a vague notion susceptible of various interpretations.

46. The CHAIRMAN said that there appeared to be a majority in favour of retaining the words “directly or indirectly” in the definition. He invited the Committee to approve the Netherlands proposal to replace the words “this Convention” by the words “article 2 of this Convention”.

47. It was so decided.

48. The definition of “proceeds” proposed by Canada and the United States, in annex IV to document E/CONF.82/3, as amended, was approved.

“Instrumentalities”

49. The CHAIRMAN invited the Committee to consider the definition of the term “instrumentalities” proposed by Canada and the United States in document E/CONF.82/3 (p. 108).

50. Mr. BOBIASZ (Canada) said that a definition of the term “instrumentalities” might not be necessary, since the notion was spelt out in article 3, paragraph 1.

51. Mr. BROWNING (United States of America) said that it would be appropriate for the Committee to accept a definition of the term “instrumentalities” since it appeared in article 5, paragraph 3(g) of the convention as well.

52. Mr. RAO (India) said that the proposed definition would restrict the meaning of the term as used in article 3 and he would prefer it not to be defined.

53. Mr. LAVIŇA (Philippines) said that he saw no need for the definition.

54. Mr. IGARASHI (Japan) suggested the insertion of the word “tangible” before the word “property” since it was his understanding that the term “instrumentalities” was intended to cover, for example, a car or an aircraft.

55. Mr. SIBLESZ (Netherlands) said that in his view the definition was unnecessary. If it was included, however, reference to article 3 should be inserted in it and the word “property” should not be qualified in any way.

56. Mrs. ROUCHEREAU (France) also questioned the need for the definition. The term “instrumentalities” should be understood in the context of the articles in which it appeared.
57. Mrs. JONES (United Kingdom) said that her delegation opposed the inclusion of the definition.

58. The CHAIRMAN said that he took it that the Committee agreed not to include a definition of the term “instrumentalities” in the draft.

59. It was so decided.

“Tracing”

60. The CHAIRMAN invited the Committee to consider whether the draft should contain a definition of the term “tracing” as proposed in the basic text and the Canadian and United States proposal (E/CONF.82/3, pp. 50, 107).

61. The Committee decided not to include a definition of the term “tracing” in the draft convention.

“Confiscation”

62. The CHAIRMAN said that the Committee had to decide whether the terms “confiscation” and “forfeiture” were both needed in the text of the convention. Two proposals for definitions submitted by delegations were before the Committee in document E/CONF.82/3: that of Mexico, defining “forfeiture” as “the definitive deprivation of proceeds by court order” (p. 106), a definition which differed from that proposed in the basic text (p. 48) only by the inclusion of the word “definitive”; and the joint proposal by Canada and the United States, defining “confiscation” as “the deprivation of property by order of a court or other lawful authority” (p. 107). He understood that both terms would be translated by “decomiso” in the Spanish version of the text.

63. Mr. GONZALEZ FELIX (Mexico) confirmed the statement about the Spanish translation. His delegation would prefer the term “forfeiture” to appear in the English version; if it did not, it should be made clear that “confiscation” and “forfeiture” were to be construed in the same manner. The use of the adjective “definitive” in the Mexican proposal was intended to distinguish “forfeiture” from any other means of securing property.

64. Mr. RAO (India) said that in his view “confiscation” generally referred to goods, whereas “forfeiture” applied to property rights. He would therefore prefer both terms to be used. He suggested that “confiscation” should be defined as “the deprivation of property by order of the court or other competent authority”.

65. Mrs. VEVIA (Spain) agreed that “confiscation” and “forfeiture” would both be translated by “decomiso” in Spanish. She considered that the inclusion of the adjective “definitive” was essential.

66. Mr. AL-AL-SHEIKH (Saudi Arabia) said that he preferred the term “confiscation”, which meant definitive deprivation of property. He considered that the words “competent authority” or “competent legal authority” should appear in the definition.

67. Mr. MADDEN (Jamaica) suggested that both “confiscation” and “forfeiture” should be used, so as to meet the needs of all countries. The use of the word “definitive” amplified the meaning of the notion. The words “other competent authorities” or “other competent legal authorities” should replace the words “other lawful authority”.

68. Mr. OUCHARIF (Morocco) said that he had no problem with the word “confiscation”, the Arabic equivalent of which meant deprivation by court order. The use of the word “definitive” in the definition of “forfeiture” would be limiting; if it was included, the Committee might have to recast the definition by introducing wording such as “by definitive decision of a court”. The definition should be a broad one so as to leave open the possibility for a bona fide third party to recover his property.

69. Mr. FOFANA (Senegal) said that in French law there was no distinction between definitive and provisional deprivation of property. To include the word “definitive” would open the door to complications and might affect the definitive nature of the court order.

70. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that he would prefer the term “confiscation”, which was defined in his country’s legal system. However, in order to avoid a long discussion about the relative merits of the terms “confiscation” and “forfeiture”, he suggested that both should be used.

71. The CHAIRMAN said that in article 3, paragraph 4(a), the Committee had approved the expressions “order... from its competent authorities” and “order issued by the requesting Party”. The Committee’s understanding had been that the question whether international co-operation would be available only when the confiscation order was made by a court was answered by the generic provision in article 3, paragraph 4(c), which left the matter to be determined by the domestic law of the Parties or by treaty. He therefore wondered if a reference to “other competent authorities” was necessary in the definition.

72. Mr. SUN Lin (China) said that in Chinese “forfeiture” and “confiscation” had the same meaning. He supported the use of a single term for the two notions. He favoured the use of the words “other competent authorities”.

73. Mr. METAXAS (Greece) supported the joint proposal and suggested the addition, after the words “other lawful authority”, of the words “as provided by domestic law”.

74. Mr. BOBIASZ (Canada) proposed the following definition: “Confiscation”, which includes forfeiture where appropriate, means the permanent deprivation of property by lawful authority”.

75. Mr. AL-OZAIR (Yemen) endorsed views expressed by the representatives of Saudi Arabia and Morocco with respect to the term “confiscation”. He proposed the following definition of confiscation: “deprivation of property by decision of a court or other competent legal authority”. In his country, however, confiscation could only be effected by a court decision.
76. Mr. SIBLESZ (Netherlands) suggested that the new definition proposed by the Canadian delegation should be amended by the substitution of the words “deprivation of ownership of property by order of a court” for the words “deprivation of property by lawful authority”.

77. Mr. RAO (India) suggested that the new definition should be amended by the substitution of the words “competent authority” for the words “lawful authority”.

78. Mr. von HENGSTENBERG (Federal Republic of Germany) said that the new Canadian definition was equally acceptable to his delegation whether it was in its original form or in the Netherlands or Indian formulations.

79. Mr. OUCHARIF (Morocco) said that he could not accept the proposal to include the notion of ownership because it limited the scope of the definition.

80. Mrs. ROUCHEREAU (France) said that her delegation would like the definition to contain a reference either to a court order or to a decision by a judicial authority. It could accept a reference to “other competent authorities” as well if that was considered necessary. If the definition included the words “deprivation of property”, they should be translated into French by the expression “privation de propriété”; the expression “dépossession de biens” used in the French version of the original joint proposal would be inappropriate for French domestic law.

81. Mr. WOTAVA (Austria) endorsed the previous speaker’s comment about the content of the definition. The use of the words “by order of a court” would avoid the impression that in most cases administrative authorities would be competent to order confiscation.

82. Mr. LIEBERT (Papua New Guinea) agreed with the representative of Morocco regarding the problem posed by the word “ownership”. He preferred the text proposed by Canada and the United States in document E/CONF.82/3.

83. Mr. MADDEN (Jamaica) said that he would like the definition to contain a specific reference to a court. He too had reservations about the word “ownership”, which might restrict the scope of the definition.

84. Mr. WELLS (Australia) said that it might be better to omit the reference to a court, because other mechanisms involving judicial review might exist in the future. He agreed with the Moroccan representative that the reference to deprivation of property should go beyond the notion of ownership. He could approve the text proposed by the United States and Canada in document E/CONF.82/3 either as it stood or as amended by the Netherlands; in the latter case he would like the words “ownership of” to be replaced by the words “an interest in”.

85. Ms. IBRAHIM (Malaysia) said that her delegation could not agree to the inclusion of the term “ownership” in the definition.

86. Mr. AL-OZAIR (Yemen) said he understood that there were States in which confiscation could be effected by authorities other than a court. The wording should therefore be “by order of a court or another legal authority”.

The meeting rose at 1 p.m.

13th meeting
Monday, 5 December 1988, at 3.20 p.m.
Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 1 (continued)

“Confiscation” (continued)
1. The CHAIRMAN invited the Secretary to read out the definition of the term “confiscation” arrived at after approval of amendments proposed by several delegations.

2. Mr. BAILEY (Secretary of the Committee) read out the currently proposed definition:

“Confiscation, which includes forfeiture where appropriate, means the permanent deprivation of property by order of a court or other competent authority.”

3. Mr. BRUCE (Ghana) said that, since the Committee had been considering in many cases the confiscation not only of property but also of proceeds, the word “proceeds” should be included in the definition of confiscation.

4. Mr. AL-NOWAIser (Saudi Arabia) said that his delegation supported the proposed text read by the Secretary of the Committee.

5. Mr. MEYER (United States of America) said that he did not understand the meaning of the words “where appropriate” in the phrase “which included forfeiture where appropriate”. It was important to know who would decide what was or was not appropriate. He agreed to the use of the expression “permanent deprivation” and to the replacement of the word “lawful” by “competent authority”.


6. The CHAIRMAN said that the words “where appropriate” had been included because in some legal systems the term forfeiture was not used to indicate permanent deprivation. In such cases forfeiture would not be appropriate.

7. Mr. ERNER (Turkey) supported the definition now proposed.

8. Mr. SUN Lin (China) also supported the proposed definition. There were some terminological difficulties in English terms confiscation and forfeiture were covered by the same word “confiscation”. He could, however, accept the proposed definition.

9. Mr. BAEYENS (France) said that in French law the English terms confiscation and forfeiture were covered by the same word “confiscation”. He could, however, accept the proposed definition.

10. Mr. OUCHARIF (Morocco) said that if permanent deprivation meant final and absolute deprivation, he would have difficulty in accepting the definition. In his view the word “permanent” had a more flexible meaning. The number of amendments proposed was causing confusion. He therefore proposed that the definition of “confiscation” originally proposed by Canada and the United States (E/CONF.82/3, p. 107) should be approved.

11. The CHAIRMAN said that the word “permanent” had been used, instead of “definitive”, not so much to indicate the finality of the deprivation as to distinguish the measure from provisional deprivation.

12. Mr. LAVIÑA (Philippines) said that each individual element in the definition should perhaps be considered separately. The word qualifying “deprivation” had to convey finality, in his view. The act of deprivation had also to be ordered by a court or other competent authority and the effect of the deprivation had to be in favour of the State.

13. Mr. MEYER (United States of America) said that, understanding now the reason for the use of the words “where appropriate”, he considered “where applicable” more suitable. He supported the proposal of the representative of Morocco that the definition of “confiscation” originally proposed by Canada and the United States be approved.

14. The CHAIRMAN said he took it that the formula “where applicable” was acceptable to all delegations. He invited the Committee to consider the proposal by Ghana to insert the words “and proceeds” after “property” in the proposed definition.

15. Mr. SCHUTTE (Netherlands), supported by Mrs. VEVIA (Spain) said that the term “proceeds” had already been accepted by the Committee as meaning a partial form of “property”, which was therefore the generic term. He saw no justification for adding the term “proceeds” to the definition.

16. The CHAIRMAN suggested that the Committee should approve the following definition of the term “confiscation”:

“Confiscation, which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority.”

17. The definition of “confiscation” suggested by the Chairman was approved.

“Freezing”, “Seizure”

18. The CHAIRMAN invited the Committee to consider the definitions of the terms “freezing” and “seizure”, as they appeared in article 1 of the draft convention (E/CONF.82/3, pp. 48-49), in the proposal by Mexico (ibid, p. 106) and in the proposal by Canada and the United States (ibid, p. 107). He recalled that the Committee had already requested the Drafting Committee to find another term to replace “freezing”, in view of translation difficulties.

19. Mr. GONZALEZ FELIX (Mexico) said that his delegation had earlier suggested the replacement of the word “freezing” by the words “preventive embargo”.

20. The CHAIRMAN pointed out that in provisions of article 3 reference was made to both “freezing” and “seizure”. In each case the two words were linked by the conjunction “or”, which implied that a Party would not necessarily be obliged to use the term “freezing”. What was required was an acceptable definition of the measures to be taken by the authorities concerned.

21. Mrs. VEVIA (Spain) shared the concern of the Mexican delegation. Although the word “bloquear” was used in the Spanish language with an equivalent meaning, she would be prepared to accept the words “preventive embargo” suggested by the Mexican representative.

22. Mr. GONZALEZ FELIX (Mexico) said that the use of the terms “embargo preventivo” or “embargo precautario” in the Spanish version of the convention would not necessarily imply that the corresponding English words “preventive embargo” should be used in the English version also. “Embargo preventivo” could constitute the Spanish equivalent for “freezing” in the English version. Unfortunately, the term “seizure” was also likely to give rise to language difficulties.

23. Mr. BAEYENS (France) said that his delegation was faced with a similar problem, namely that the term “freezing” (“gel”) was not an accepted term in French law. It might be possible to find a single term to represent the notions of “freezing” and “seizure”.

24. The CHAIRMAN said that, in referring to the conjunction “or” used between the words “freezing” and “seizure”, he had not meant to suggest the use of a single term to cover both.

25. Mr. LAVIÑA (Philippines) suggested that the Committee should adopt the same procedure as for the definition of “confiscation”, establishing the constituent
elements of the term in the version proposed and then seeking appropriate terms in the other languages. The equivalent of "freezing" in the other language versions need not necessarily be etymologically equivalent.

26. Mr. MEYER (United States of America) supported the suggestion of the representative of the Philippines. There was a clear distinction between the two notions. "Freezing" applied, for example, to bank accounts, which were in principle intangible entities, while "seizure" applied to concrete objects, such as houses, boats, etc. Whereas freezing referred to the prohibition of transfer, conversion or movement operations, seizure involved assuming custody or control of an object, often physical control. The two terms could neither be employed indiscriminately nor used as equivalents.

27. Mr. AL-NOWAISER (Saudi Arabia) pointed out that the definition of "freezing" in article 1 of the draft convention appeared in the form of two Variants, A and B. Of the two, he preferred Variant B since it included the notion of temporary prohibition, which he understood to be implied by the English term "freezing".

28. Mrs. JONES (United Kingdom) said that her delegation had no difficulty with the term "freezing". She saw merit, however, in the idea of not having general definitions of "freezing" and "seizure" in article 1; it might be preferable to concentrate on making their meaning clear in the provisions where they appeared. Some support for that approach was to be found in the text of article 3 where the meaning of the word "seize" was clearly not the same in paragraph 2 as it was in 4(b). In the former case it referred to temporary measures leading to the ultimate disposal of assets, while in the latter it was concerned with the seizing of evidence for investigatory purposes.

29. Mr. KATHOLNIGG (Federal Republic of Germany) said that the English terms "freezing" and "seizure" would not be appropriate in relation to his country's legal system. Since, however, the two terms were linked by the word "or" in article 3, a single definition for "freezing or seizure", as suggested by the representative of the Philippines, might be a useful solution. The formula adopted could be compatible with all the different legal systems, and could also cover the notion of preventive embargo.

30. Mr. SCHUTTE (Netherlands) also saw advantage in approving a single definition for the two terms.

31. So far as the meaning of the terms was concerned, he understood that "freezing" left the property where it was found, whereas "seizure" resulted in it being taken into some form of custody. He wished to draw attention to an important point, namely that the notion of temporality, to be found in the Variant B definition of "freezing", was in fact equally applicable to seizure.

32. Mr. GUNEY (Turkey) also supported the idea of a combined definition.

33. Mr. MARTINI (Guatemala), speaking in support of the Mexican representative's remarks, said that in the legal system of the Latin American countries, the term "embargo" meant the prohibition to dispose of, or to move, property affected by an order. The measure could take the form of an embargo precautario or preventivo. Application for that type of measure was made to the court at the commencement of a suit and the court granted the order on the spot without entering into the merits of the case. The effects of the measure usually lasted throughout the proceedings and, if the decision on the merits was in favour of the claimant, the measure became final and was termed "embargo definitivo".

34. A different situation arose in cases where the assets to be attached were deposited with a third party, e.g. a bank. The security measure was then termed "secuestro judicial". In that situation, the court appointed a depositary third party to be responsible for the assets attached.

35. Mr. BOBIASZ (Canada) proposed the following wording for the definition of the expression "seize or freezing", which combined the two notions and took account of certain elements suggested by various delegations:

"'Seize or freezing' means assuming provisional custody or control of property by a lawful authority, including temporarily prohibiting the transfer, conversion or disposition of property."

36. Mr. MEYER (United States of America) said that in the legal system of his country, "freezing" and "seizure" were two different notions. For the purposes of the present convention, however, a combined definition could be adopted, since the two terms were used together throughout the text. He welcomed the Canadian proposal, which he suggested should be reworded as follows:

"'Freezing or seizure' means temporarily prohibiting the transfer, conversion, disposition of property, or temporarily assuming custody or control of property by a competent authority."

37. Mr. OUCHARIF (Morocco) also favoured a combined definition of the two terms, which would accommodate the various legal systems, including that of his country. He wished to know, however, the implications of the use of the expression "competent authority". Was it an administrative authority, a judicial authority or either?

38. The CHAIRMAN said he felt that that point would be settled by the domestic law of the Party concerned.

39. Mr. LAVIÑA (Philippines) said he agreed with the Chairman. He supported the formulations put forward by the United States and Canada.

40. Mr. MADDE (Jamaica) also supported the approach adopted by the Canadian and United States delegations. He believed that the competent authority would in some cases be a court.

41. Mr. OUCHARIF (Morocco) said that his delegation could accept the substance of the Canadian and United States proposals.

42. Mr. GONZALEZ FELIX (Mexico) supported the combined definitions proposed and favoured the use, in
the Spanish version, of the term "embargo preventivo" for the English word "freezing". As for the term to be used in Spanish for "seizure", he considered that the word "incautación" which appeared in the Spanish version of the draft convention was incorrect. He suggested instead "medidas de seguridad".

43. Mr. BROWNING (United States of America), in order to take into account the point raised by the representative of Jamaica, modified his delegation's proposal, the end of which should read: "by a court or other competent authority".

44. Mr. SCHUTTE (Netherlands) noted that the wording proposed by the United States representative included the phrase "temporarily assuming custody or control of property". That operation was in fact performed under a court order but not by the court itself.

45. Mr. MADDEN (Jamaica) suggested, in order to take account of that point, that the phrase "on the basis of an order of a court or other appropriate authority" should be used.

46. Mr. LAVÍÑA (Philippines) supported that wording which would have the advantage of not specifying who was to have custody or control of the property.

47. Mr. WOTAVA (Austria) supported the wording proposed by the United States, as amended by Jamaica.

48. Mr. OUCHARIF (Morocco) said that if the term "competent authority" meant the judicial authority, the result would be contrary to Moroccan law. In his country, seizures could be made by the customs authorities or by the police, without a court order. If the wording was intended to allow that possibility, his delegation could support the proposed text.

49. The CHAIRMAN pointed out that if the definition used the expression "court or other competent authority", it would be clear that a seizure could be effected by the authorities mentioned by the Moroccan representative.

50. Mr. GONZALEZ FELIX (Mexico) supported the United States wording and drew the attention of the Drafting Committee to the fact that the term "freezing" should be rendered in Spanish by "embargo preventivo" or "embargo asegurado".

51. Mr. OSHIKIRI (Japan) alluded to possible cases—particularly in countries in which confiscation fell under criminal jurisdiction—where the action of freezing or seizure was not necessarily subject to an order. Provided, therefore, that the existence of an order was not deemed a prerequisite for the execution of freezing or seizure, his delegation could agree to the definition as now proposed.

52. The CHAIRMAN suggested that the Committee should approve the following definition:

"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 other competent authority."

53. The definition of "freezing or seizure" suggested by the Chairman was approved.

Legitimate third party (E/CONF.82/C.1/L.19)

54. Mr. SCHUTTE (Netherlands) noted that in article 3, paragraph 8 the words "bona fide third parties" had been preferred to "legitimate third parties". He wondered whether a definition of the former expression was in fact needed. If it was, he felt that the wording of the definition of "legitimate third party" on page 49 of document E/CONF.82/3 might be improved upon, perhaps after consultation among delegations.

55. Mr. GAUTIER (France) suggested that since the expression under discussion appeared in only one article of the draft convention, a definition was perhaps not necessary.

56. Mr. LAVÍÑA (Philippines) disagreed with the previous speaker: even though the expression appeared only once, its implications were important. Other definitions which had been approved were virtually self-evident, and he saw no reason why the Committee should not endeavour to formulate a definition in the present instance. He suggested that the expression "bona fide third party" signified "any person, natural or juridical, who, acting in good faith, has lawfully acquired the right to use, control, possess or own proceeds".

57. Mr. RAIMONDI (Italy) considered a definition of the term to be necessary.

58. Mr. FOFANA (Senegal) agreed with the representative of the Philippines that the matter was important. He felt, however, that the appreciation of good faith should be left to the judges concerned. He saw no need for a definition.

59. Mr. KATHOLNIIGG (Federal Republic of Germany) also considered that, notwithstanding its importance, the definition of "bona fide third party" should be left to national laws.

60. Mr. AFFENTRANGER (Switzerland) considered it undesirable for the Committee to undertake a long debate in an attempt to agree on a definition.

61. Mr. GAUTIER (France) agreed with the previous speaker. Such a debate could open a Pandora's box which it might be wiser to leave closed.

62. Mr. OUCHARIF (Morocco) supported the remarks of the Swiss and French representatives.

63. Mrs. VEVIA (Spain) also considered that the formulation of a definition of "bona fide third party" should not be attempted. It should, however, be clearly understood that the definition of the notion should be left to the appreciation of each Party.
64. Mr. AL-ALSHEIKH (Saudi Arabia) also believed that the matter should be left to domestic law.

65. Mr. AL-ÖZAIR (Yemen) drew attention to his delegation's amendment in document E/CONF.82/C.1/L.19. His delegation would be prepared, however, to join in any consensus that emerged in the Committee on the matter under discussion.

66. Mrs. KATHREIN (Austria) considered that the definition of "legitimate third party" should be deleted from the draft convention, and that there should be no definition of "bona fide third party".

67. Mr. ZVONKO (Byelorussian Soviet Socialist Republic) agreed that no attempt should be made to define "bona fide third party". He pointed out that the use of the Latin words bona fide in all the language versions of article 3, paragraph 8, would at least ensure the absence of translation difficulties.

68. The CHAIRMAN asked whether the Committee agreed to delete the definition of "legitimate third party" from the draft convention and to refrain from adding to that text a definition of "bona fide third party".

69. It was so agreed.

70. Mr. SCHUTTE (Netherlands) said he wished to place on record that his delegation understood "bona fide third party" to mean any person, corporation or other legal entity, who has acquired exclusive ownership rights in, or any real or personal rights with respect to any item of property and who, at the time of the establishment of such right, did not know or should not reasonably have known that such property was, or might become, subject to a confiscation order as referred to in article 3.

71. Mr. LAVIÑA (Philippines) concurred with the definition of "bona fide third party" just given by the representative of the Netherlands. Article 3, paragraph 8 was important in that it protected the rights of innocent parties. Bona fide had an accepted meaning under most, but not all, legal systems. To omit a definition of the expression discussed was to evade the issue.

72. Mr. YBAÑEZ (Spain) said that he too had some doubts as to the wisdom of omitting a definition of the expression "bona fide third party". However, it was not the intention in the draft convention to legislate for every possible case. The aim should be to ensure the greatest possible measure of harmony among the different language versions. He supported the Byelorussian representative's suggestion that the words "bona fide" should, if possible, be left in Latin in the various language versions of the convention.

73. The CHAIRMAN suggested that the Drafting Committee should be instructed to aim for the greatest possible harmony among the language versions. In particular, the expression "bona fide" should be maintained in Latin wherever possible.

74. It was so agreed.

75. The CHAIRMAN said that the Committee's consideration of definitions pertaining to article 3 was concluded.

Article 2, paragraph 7 (continued)

76. Mr. MADDEN (Jamaica) recalled the amendment submitted by his delegation in document E/CONF.82/C.1/L.9, which was addressed to article 2, paragraph 7, but whose contents had a bearing also on articles 3, 4 and 5. He had understood from the earlier discussion of that amendment (E/CONF.82/C.1/SR.4, pp. 9-11) that the Committee had agreed to reconsider its underlying concept when it examined each of the articles referred to in the amendment. He asked whether the Committee would consider that amendment further with a view to establishing formally the linkage with article 3. He believed that the exercise would be helpful, and that an important gap might be filled.

77. In the absence of any initial response to the Jamaican representative's request, the CHAIRMAN expressed his personal view that article 3, paragraph 4(c), provided in a more general and comprehensive fashion for grounds for refusal to comply with requests.

78. Mr. MADDEN (Jamaica), suggesting that the absence of comment might be interpreted as an absence of objection to the concept embodied in his delegation's amendment, submitted that the provisions of article 3, paragraph 4(c), were perhaps of a more procedural than substantive nature. He continued to believe that the provision proposed in the amendment might usefully be linked specifically with article 3, especially in relation to the provision in article 3, paragraph 4(f), that the convention might be considered as a necessary treaty basis. In sum, he regarded the proposed provision as worthy of standing on its own as part of the necessary process of checks and balances in international law-making.

79. Mr. KAPELrud (Norway) recalled that his delegation had reserved its position with regard to article 2, paragraph 7. It intended to reiterate its concern on the matter when the Committee took up article 4.

80. Mr. BOBIASZ (Canada) expressed the view that article 3, paragraph 4(c), adequately empowered a Party, through its domestic law, to cover the issues raised in the Jamaican amendment, which appeared to be more relevant to articles 4 and 5. He would certainly find it difficult to agree to the inclusion of the text proposed by Jamaica as part of article 3 or as an attachment thereto.

81. Mrs. ROUCHEREAU (France) said that the Jamaican amendment might find its proper place in article 4, rather than in article 3.

82. The CHAIRMAN said that in his view the Committee had established that article 3, paragraph 4(c), was not simply concerned with procedure, but was, in fact, a substantive provision.
83. Mr. MADDEN (Jamaica) said that, in the light of the discussion which had taken place, his delegation modified the proposal in document E/CONF.82/C.1/L.9 by deleting the reference in it to article 3. He would raise the matter again when the Committee took up article 4.

Article 3 (continued)

Title

84. The CHAIRMAN invited the Committee, having completed its consideration of the text of article 3, to consider its title. The provisions of the article dealt with a number of matters, among which the notion of confiscation appeared to be the most significant and to have the highest value in terms of sanction and deterrence. He proposed that the title of the article should be “Confiscation”.

85. It was so decided.

Article 1 (continued)

Title

86. The CHAIRMAN invited the Committee to consider the question of the title for article 1. Two titles proposed during the preparatory stages of the drafting of the convention were “Use of Terms” and “Definitions”. Considering that the latter word corresponded more closely to the reality of the article he suggested that it should be used as the title of the article, whose text should begin with introductory words indicating that the definitions which were understood as being simply an introductory paragraph. There should be no omissions in paragraph 5 and any that were discovered should not be rectified in paragraph 1.

87. It was so decided.

Article 4

Paragraph 1

88. Mr. GAUTIER (France) suggested that the words “Parties [concerned]” should be replaced by a reference to the requesting and the requested Parties, the formula customarily used in extradition agreements.

89. Mr. STEWART (United States of America), supported by the representatives of Japan, the Philippines, Saudi Arabia and Israel, said that the article applied to the offences established, irrespective of whether the Parties—requesting or requested—were concerned. He proposed that the word “[concerned]” should be deleted.

90. Mrs. KATHREIN (Austria), supported by the representative of the Federal Republic of Germany, noted a connection between the phrase in square brackets in paragraph 5 of the article and paragraph 1. She suggested that the Committee might consider inserting in paragraph 1 a reference to the seriousness of the offences.

91. The CHAIRMAN said that paragraph 1 was best understood as being simply an introductory paragraph.

92. Mr. SCHUTTE (Netherlands) agreed with the Chairman. With reference to the scope of article 4, however, he noted that the phrase in brackets “Except as otherwise provided in this article” at the beginning of paragraph 5 did not specify which provisions were meant. If the exceptions to the conditions provided for by the law of the requested Party or by applicable extradition treaties were not specified in paragraph 1, they should be mentioned in paragraph 5.

93. The CHAIRMAN observed that, if paragraph 1 was not mentioned as a provision giving rise to an exception under paragraph 5, it could not then result in any exceptions; paragraph 1 was therefore neutral in respect of paragraph 5.

94. Mrs. KATHREIN (Austria) said that she could accept paragraph 1 on that understanding. She proposed, however, that the word “concerned” should be deleted.

95. It was so decided.

96. Article 4, paragraph 1, as amended, was approved.

Paragraph 2

97. Mr. AL-ALSHEIK (Saudi Arabia) suggested that the words “undertake to include” in the second sentence of the paragraph should be replaced by “may include”.

98. The CHAIRMAN pointed out that both the open-ended intergovernmental expert group and the Review Group had thought it appropriate to align article 4, paragraph 2, with the analogous paragraph in other conventions.

99. Article 4, paragraph 2, was approved.

Paragraph 3

100. Mr. LAVIÑA (Philippines) proposed that the word “may” should be deleted and that the square brackets should be removed from the word “shall”.

101. Mr. STEWART (United States of America) said that his country could not accept the word “shall” in the paragraph, as it had a firm policy that extraditions were agreed on a bilateral and not a multilateral basis. That position had been accepted by other countries, as was evidenced by the 1988 IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. The analogous provision in that Convention (article 11, paragraph 2) had been adopted by consensus, and read: “If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3.”
For the United States, therefore, the use of the word “may” would in fact strengthen the present draft convention.

102. Mr. BRUCE (Ghana) said that extradition should take place only under a bilateral agreement. He therefore supported the use of the word “may”.

103. Mr. KATHOLNIGG (Federal Republic of Germany) said that his delegation could not approve the use of the word “may”, which would weaken the draft convention unacceptably and create an imbalance between the provisions of paragraphs 3 and 4 of article 4.

104. Mr. VIANA de CARVALHO (Brazil) supported the use of the word “may” in paragraph 3.

105. Mr. OUCHARIF (Morocco) said that, in the interest of a strong convention, the word “shall” was preferable. Morocco would have wished to insist that countries consider the convention as the legal basis for extradition. He recognized, however, that for practical reasons the word “may” must be retained.

The meeting rose at 6 p.m.

14th meeting

Tuesday, 6 December 1988, at 10.20 a.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4 (continued)

Paragraph 3 (continued)

1. Mrs. OLIVEROS (Argentina) supported the proposal made by the Philippines at the previous meeting (E/CONF.82/C.1/SR.13, para. 100). It was in the interests of the international community to prepare a convention whose provisions would serve as a basis for growth in international law, a fundamental aim of the United Nations Charter.

2. Mr. MADDEN (Jamaica) said that his delegation preferred the word “may” to “shall”. A Party should not be obliged to consider the convention as the legal basis for extradition since its domestic legislation might require extradition to be based on an extradition treaty.

3. Mr. ABBAD (Algeria) said that he too favoured the use of the word “may”. His country’s domestic legal system was even more draconian than the convention and provided for the death penalty for drug traffickers. Algeria wished to join the international community in bringing effective measures to bear on the illicit traffic in drugs but its domestic legislation required extradition to be discretionary.

4. Mr. OSHIKIRI (Japan) said that his delegation was in favour of using the word “shall”. It was essential to prevent illicit traffic in drugs by imposing punishment on offenders and depriving them of income or other benefits derived from illicit proceeds. Such aims could only work effectively with international co-operation. The use of the word “may” in paragraph 3 would produce a loophole in the framework since it would allow a Party to make extradition conditional on the existence of an extradition treaty and not to use the convention as the legal basis for extradition.

5. Mr. AL-NOWAISER (Saudi Arabia) said that his delegation preferred the word “may”.

6. Mrs. GOLAN (Israel) said that, although her delegation was in favour of the idea that the convention should be the legal basis for extradition, the draft should make provision for States like Israel which made extradition conditional on the existence of an extradition treaty. The use of the word “may” should enable such States to become Parties to the convention. That flexible approach had been taken in the IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, adopted in March 1988.

7. Mr. POPOV (Bulgaria) reminded the Committee of its decision to replace the word “may” by the word “shall” in article 3, paragraph 4(f), which dealt with co-operation in regard to confiscation. The Conference was effectively involved in a process of codification of international law. His delegation suggested that the word “may” should be used in article 4, paragraph 3, and that the clause should be amended either by inserting the word “necessary” before the words “legal basis” or by replacing the words “legal basis” by the words “a legal basis”.

8. Mr. MOAYEDODDIN (Islamic Republic of Iran) said his delegation preferred the word “may” to the word “shall”. His country’s domestic legislation provided for strict measures to be taken against drug traffickers but, like other States, the Islamic Republic of Iran made extradition conditional on the existence of an extradition treaty.

9. Mr. DURAY (Belgium) said that his country’s domestic law would enable his delegation to accept the word
“may” in paragraph 3. However, Belgium would favour a more mandatory formula in order to demonstrate the intention to make the convention effective, and it therefore supported the proposal to use the word “shall”.

10. Mrs. JONES (United Kingdom) said that her delegation was in favour of using the word “may”. There was no point in the convention employing strong language if countries could not become Parties to it because of their domestic legislation.

11. Mr. SCHUTTE (Netherlands) said that countries which made extradition conditional on the existence of an extradition treaty should not be obliged to consider the convention as the legal basis for extradition, since that might require them to alter their domestic legislation. It was understandable that those countries preferred the word “may” to the word “shall”. As a compromise between those two possibilities, he suggested that the Committee consider the use of the word “shall” qualified by the insertion after it of the words “if it has detailed legislation on extradition”.

12. Mr. VICTOR (Sweden), also speaking on behalf of Denmark, Finland and Norway, said that article 4 was one of the most important in the convention and should be strongly worded. He therefore preferred the use of the word “shall”. However, since he was aware that it would create problems for some countries, and since it was important that as many States as possible should become Parties to the convention, he thought that the Netherlands suggestion deserved serious consideration.

13. Mr. AFFENTRANGER (Switzerland) said that the convention was intended to be an important step forward in dealing with questions of drug abuse and illicit trafficking. He therefore favoured the use of the word “shall”, but since he appreciated that it would cause difficulties for a number of States, he supported the idea of a compromise formula.

14. Mr. OUCHARIP (Morocco) said that there was no problem for States which did not make extradition conditional on the existence of an extradition treaty, but that was not the case of Morocco. It was not a question of whether to use “may” or “shall”; although the term employed would not change the situation in practice, if the word “shall” was used those States making extradition conditional on the existence of an extradition treaty would not be in a position to become Parties to the convention.

15. Mr. BAEYENS (France) said that his delegation was in favour of using the word “shall”. Parties making extradition conditional on the existence of an extradition treaty and those which could extradite on the basis of domestic legislation should have the same obligations. He was not in favour of an intermediate formula.

16. Mr. RAMESH (India) said that his delegation preferred the term “may”.

17. Mrs. VEVIA (Spain) said that her delegation could accept either “may” or “shall”, or the Netherlands compromise proposal.

18. Mr. FOFANA (Senegal) said that his country had a two-tier system with regard to extradition, based partly on domestic law and partly on the existence of an extradition treaty. He favoured the term “shall” but appreciated that it would cause difficulties for certain States. The Netherlands proposal might solve the problem.

19. Mr. XU Hong (China) said that his delegation would prefer the term “shall” since it would help to strengthen the convention in the matter of extradition. It would not imply that extradition must take place in every case since extradition would be subject to domestic law. Whatever term was used— “may”, “shall” or something midway between the two—it should be one which ensured that all Parties had equal obligations.

20. Mr. PASHA (Bangladesh) said that his country’s extradition legislation authorized the Government to conclude treaties with other countries when the requisite conditions were met. He favoured the use of the word “may”.

21. Mr. WELLS (Australia) said that his delegation was prepared to accept either “may” or “shall”. It could also support the Netherlands proposal.

22. Mr. GUNEY (Turkey) said that most delegations were in favour of a strongly worded convention in order to ensure the prevention of traffic in drugs. He therefore favoured mandatory terminology and consequently the use of the term “shall”.

23. Mrs. KATHREIN (Austria) said that her delegation also favoured the use of mandatory terminology in paragraph 3 but could accept the Netherlands compromise proposal.

24. Mr. DUFT (German Democratic Republic) said that his delegation considered that a Party should not be obliged to consider the convention as the legal basis for extradition and for that reason preferred the term “may”.

25. Mr. OERIP (Indonesia) said that the convention could not be regarded as an extradition treaty and therefore paragraph 3 should be worded so that it laid down an optional provision. He therefore supported the use of the word “may”.

26. Mr. BOBIASZ (Canada) said that his delegation had a distinct preference for the term “may”. With a view to reaching a compromise on the matter, he drew the Committee’s attention to article 4, paragraph 10, requiring Parties “to seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition”. He suggested that the term “may” should be used in paragraph 3 and that paragraph 10 should be amended to the effect that should a Party decline to use the convention as a basis for extradition, it assumed an obligation under paragraph 10 to conclude agreements to carry out or enhance the effectiveness of extradition.

27. Mr. MAHMOUD (Iraq) said that his delegation was in favour of the term “may” At the same time, he agreed with the view expressed by the Moroccan representative.
28. Mr. AL-SHARARDA (Jordan) said that legislation recently enacted in Jordan prescribed the death penalty for illegal traffic in drugs. He preferred the term "may".

29. Mr. DURAY (Belgium) supported the Netherlands proposal because it seemed to provide the basis for a compromise.

30. Mr. SEKELEMANI (Botswana) said that article 4 was not sufficiently detailed to form the basis of an extradition treaty. A great deal of information would be required from a requesting State before extraditing a person under the convention. He favoured the use of the word "may".

31. Mr. SHING (Mauritius) said that while he appreciated the need for a strong convention, the difficulties of countries like his own, which made extradition conditional on the existence of a treaty, had to be recognized. There was no point in trying to impose an obligation on States that were unable to comply with it. He therefore supported the use of the word "may", which, in his view, represented the middle way.

32. Mrs. DZIETAM (Cameroon) said that in her country extradition was conditional on the existence of a bilateral treaty, although the legal system also allowed a multilateral treaty to be the basis for extradition. She therefore supported the use of the word "shall", which would make the convention more effective.

33. Mr. CAPEK (Czechoslovakia) expressed doubts about using the word "consider", particularly in association with "shall", and therefore suggested that the second half of paragraph 3 should begin with the words "it may take this Convention . . .", which would allow all Parties a proper measure of discretion.

34. Mr. VALL (Mauritania) said that, like the representative of the Netherlands, he favoured a middle way, since it was important to ensure that the maximum possible number of countries could become Parties to the convention. His own country was a Party to a large number of extradition treaties and would prefer to use the word "may".

35. Mr. SAMIA (Libyan Arab Jamahiriya) said that he too favoured the word "may", since the convention should take account of domestic legislation and make every effort to facilitate international co-operation.

36. Mrs. MOLOKWU (Nigeria) pointed out that her country had comprehensive legislation on extradition which it made conditional on the existence of an extradition treaty. It had already concluded several bilateral extradition treaties and therefore preferred the word "may". However, being in favour of a strong convention, she would be prepared to endorse any formula by which the paragraph might be made mandatory.

37. Mr. STEWART (United States of America) recalled that he had already expressed a strong preference for the word "may". The dividing line, as he saw it, lay between countries that had detailed legislation on extradition and those that did not. His own country fell into the latter group and made extradition conditional on the existence of a bilateral treaty. In those circumstances, the non-mandatory formulation represented a middle way.

38. It should be noted that the term "may" was employed in the present connection not only in the recent Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, as he had pointed out at the previous meeting (E/CONF.82/C.1/SR.13, para. 101), but also in the Convention for the Suppression of Unlawful Seizure of Aircraft and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. His delegation continued to believe that the optional formula was essential to the present convention.

39. Finally, the compromise wording proposed by the Netherlands seemed ambiguous, since it would be difficult to determine when the criterion of "detailed domestic legislation" had been met.

40. Mr. MARTIN (Guatemala) said that under his country's constitutional law nationals could not be extradited, although it was possible for that to take place under an international treaty or convention. His country was not at present inclined to replace its constitutional provisions by the criteria of a requesting country. Furthermore, under paragraph 10, detailed discussions could be held with other countries for the purpose of concluding bilateral extradition agreements. He therefore favoured using the word "may".

41. Mr. PAREJO GONZALEZ (Colombia) considered that it would be more appropriate to use the term "shall" in paragraph 3. If a country that made extradition conditional on the existence of an extradition treaty received a request from a country with which it had such a treaty, there would be no problem. If, however, no such treaty existed, the use of the mandatory formulation in paragraph 3 would fill the legal gap.

42. Mr. KATHOLNIK (Federal Republic of Germany) recalled that he had already expressed a strong preference for the word "shall" in paragraph 3. After listening to the debate, however, he felt that it would not be right to try to impose on other countries a condition that they were unable to comply with. The Netherlands proposal had addressed that problem and had received a sympathetic response. In his view, a simpler formula could perhaps be found that would meet the needs of all concerned. He therefore suggested that the text of the second part of paragraph 3 should begin with the words "it shall, where possible, consider this Convention . . .".

43. Mr. FARRARIN (Italy) associated himself with the proposal made by the Netherlands representative.

44. Mr. LAVINO (Philippines) said that the debate had revealed a number of misunderstandings regarding the effect of a mandatory formulation of paragraph 3. The Committee would recall that the term "shall" had already been approved for paragraph 4(f) of article 3. If paragraph 3 of article 4 was also made mandatory, it would not oblige the Parties to accede in all cases to requests for
extradition, but merely make the convention the legal basis for extradition. It had been pointed out that certain, related international conventions used the term "may", but they dealt with entirely different subjects. The purpose of the present convention was to strengthen the international effort to combat drug trafficking and use of the word "shall" would represent a step in that direction. Participants should make every effort to demonstrate a political will to succeed.

45. The CHAIRMAN noted that a majority of speakers favoured using the word "may" in paragraph 3, although many others had expressed a preference for "shall". He suggested that it might be possible to reconcile the two points of view by a formulation which consisted of a first sentence incorporating the word "may", to be followed by a second sentence using "shall" that would cover those cases in which the requested Party had adequate domestic provision for extradition.

46. Mr. KATHOLNIGG (Federal Republic of Germany) pointed out that a solution along the lines indicated by the Chairman might result in reopening the debate on article 3, paragraph 4(f), which he opposed.

47. Mrs. OLIVEROS (Argentina) said that the Committee seemed to be losing sight of the main purpose of paragraph 3, which was to provide a legal basis for extradition. If an optional formula was used, the whole point of the paragraph would be lost. Furthermore, paragraph 3 had to be considered in relation to paragraph 4, and unless great care was taken with its wording, different legal situations might be created for the two groups of countries concerned.

48. Mr. GONZALEZ FELIX (Mexico) supported the approach outlined by the Chairman.

49. Mr. FOFANA (Senegal) suggested that the first sentence of the formulation put forward by the Chairman should read like the existing paragraph and use the word "may", with the addition of the phrase "in the absence of domestic legislation on the subject". The second sentence would read: “In the opposite case, the Party shall consider this Convention as the legal basis for such a request for extradition.”

50. Mr. AL-NOWAISER (Saudi Arabia) said that he favoured a text based on the approach suggested by the Chairman.

51. Mr. STEWART (United States of America) said that while flexibility was desirable, the Committee must guard against the use of a mandatory formulation in which the criteria were ambiguous. He also doubted whether a second sentence along the lines suggested by the Chairman really addressed the problem facing countries that were not legally able to consider the convention as a basis for extradition.

52. Mr. OSTROVSKI (Union of Soviet Socialist Republics) preferred the word "shall" to the word "may" but favoured a flexible approach to the question. The word “shall" appeared at first sight to strengthen the convention, but might in fact weaken it if States were unwilling, or because of their domestic legislation unable, to agree to be bound by its provisions. The chief aim in view was that offenders should be punished, but it was immaterial which State took that responsibility. Since the convention was to be a universal one, nothing should be done which would deter States from becoming Parties to it. The use of "may" would provide a sufficient basis for States to reflect the extradition clause in their domestic legislation.

53. Mr. BAEEYNS (France) said that for the sake of consistency and logic, if the word "shall" was used in article 3, paragraph 4(f), it must also be used in article 4, paragraph 3.

54. Mrs. KATHREIN (Austria) agreed.

55. Mr. OSHIKIRI (Japan) said he saw no reason why article 4, paragraph 3, should not place an obligation on Parties in the matter of extradition. He agreed with the view expressed by the representative of France.

56. Mr. GUNAY (Turkey) also supported that view.

57. Mr. JANSZ (Sri Lanka) said that his delegation preferred the word "shall", which would cater for countries which had no legislation on which to base extradition measures. Article 2, paragraph 7, could be read as an enabling clause for that purpose. He was willing, however, to accept the use of "may" if that was the preference of the Committee. As a compromise, he suggested adding the words "where possible".

58. Mr. FOFANA (Senegal) expressed his view that there should be no disparity between articles 3 and 4.

59. Mr. SCHUTTE (Netherlands) was not convinced that it was essential to use the same formulation in article 3, paragraph 4(f), as in article 4, paragraph 3. Co-operation among States in the extradition of persons was of quite a different order from co-operation in the confiscation of property. Moreover, article 4 contemplated the existence of prior treaties on the same subject, whereas article 3 did not. Hence the wording of article 3 need not prejudice the operation of article 4. He hoped a compromise would emerge.

60. The CHAIRMAN observed that the formulation of a compromise text would be no easy task. He invited the delegations concerned to draw up a text which reflected the proposals made during the discussion of article 4, paragraph 3, and to submit it to the Committee at a later meeting.

61. It was so agreed.

Paragraph 4

62. The CHAIRMAN said that if there was no objection, he would take it that the Committee approved the text in document E/CONF.82/3.

63. It was so agreed.
Paragraph 5

64. The CHAIRMAN drew attention to the bracketed proviso at the beginning of the paragraph.

65. Mr. MOAYEDODDIN (Islamic Republic of Iran), supported by Mr. AL-NOWAISER (Saudi Arabia), proposed the deletion of the proviso.

66. Mrs. KATHREIN (Austria) said that the proviso should be deleted unless it was made clear to which paragraphs it applied.

67. Mr. SCHUTTE (Netherlands) said that if the proviso was deleted, it would be unclear how paragraph 5 related to article 4, paragraphs 6 and 7, or to article 2, paragraph 7. It would be useful to keep it, but it should not be worded in reference to article 4 only. He suggested amending it to read "Except as provided in . . .", and adding the necessary references after the word "in" when paragraphs 6 and 7 had been dealt with.

68. Mr. VALL (Mauritania) preferred the deletion of the proviso.

69. Mr. VIANA de CARVALHO (Brazil) said that the proviso should be deleted. No text should be inserted in its place until the remainder of the article had been approved.

70. Mr. POFAWA (Senegal) and Mr. AL-MUBARAKI (Kuwait) favoured the deletion of the proviso.

71. Mr. LAVINIA (Philippines) argued that the proviso was essential to the paragraph and must be retained. He suggested that the word "article" in the proviso should be replaced by the word "Convention".

72. Mrs. KATHREIN (Austria) said that the scope of the words "otherwise provided" should be made clear. She took it that the excepted provisions would be found only in article 4. She might comment later on the implications of the matter for article 1.

73. The CHAIRMAN said that it was necessary to clarify the relationship between article 4, paragraph 5, and other provisions of the draft which dealt with extradition, including article 2, paragraph 7, which had already been approved and contained an express reference to article 4.

74. Mr. WELLS (Australia) agreed that it was necessary to specify in which instances domestic law or extradition treaties did not apply. He recalled that when the proviso had been inserted by the Review Group its implications had been unclear.

75. Mr. MADDEN (Jamaica) agreed with the views expressed by the representatives of the Netherlands, the Philippines and Australia.

76. Mr. KATHOLNIGG (Federal Republic of Germany) said that the proviso should be deleted; it was ambiguous and might cause misunderstanding. To attempt to specify later which provisions were intended by it, as the representative of the Netherlands had suggested, would create additional difficulties.

77. Mr. LEE (Canada) said he could accept either the proviso as it stood or the wording proposed by the representative of the Netherlands.

78. Mr. OUCHARIF (Morocco) said that, on the assumption that countries would apply either their domestic law or a bilateral treaty, the paragraph might begin simply "except as otherwise provided". Alternatively, the proviso might be deleted and the paragraph left as the statement of a general rule, the exceptions being defined elsewhere in the text.

79. Mr. AL-OZAIR (Yemen) supported the proposal to delete the proviso.

80. Mr. SORIA GALVARRO (Bolivia) said he thought the proviso was clear enough, since it must refer to article 4, but he nevertheless supported the proposal to delete it.

81. Mr. OERIP (Indonesia) said that the proviso was confusing and should be deleted.

82. Mr. AL-SHARARDA (Jordan) and Mr. ABBAD (Algeria) agreed.

83. Mr. TAKALA (Finland), also speaking on behalf of Denmark, Norway and Sweden, said that the proviso should be deleted.

84. Mrs. OLIVEROS (Argentina) said she doubted whether it should be deleted altogether. Instead, the words "this Convention" might be substituted for the words "this article", as suggested by the Philippines, and the entire paragraph moved to the place occupied by paragraph 3. She might wish to revert to the point when paragraph 3 had been approved.

85. Mrs. VEVIA (Spain) said that if the proviso was to refer specifically to article 4, she wished it to be deleted; if it referred to other parts of the convention, she would support the proposal made by the representative of the Netherlands.

86. Mr. KEUCKE (German Democratic Republic) shared the views expressed by the representative of the Federal Republic of Germany and supported the proposal to delete the proviso.

87. Mr. OSHIKIRI (Japan) favoured retaining it, in order to provide an indication of which provisions were to prevail over the one laid down in paragraph 5.

88. Mr. GONZALEZ FELIX (Mexico) said that he would await the final drafting of paragraph 6 and subsequent paragraphs before formulating an opinion on paragraph 5. He recalled that when considering article 2, paragraph 7, the Committee had decided to deal with the right of asylum in connection with extradition. He could not take a final decision on the retention or deletion of the proviso until it was clear which other provisions might be affected by it.
Constitution of a Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4 (continued)

Paragraph 3 (continued)

1. The CHAIRMAN, noting that no new text for paragraph 3 had as yet been submitted to the Committee, invited the delegations engaged in consultations on such a text to bear in mind, when considering whether the provision in the paragraph should be mandatory or optional, the position of States for which the enactment of detailed domestic legislation on extradition posed problems. To take account of their position, it might be agreed, if a mandatory provision was decided upon, that such States were not obliged to enact legislation, but simply called upon not to respond negatively to any request made for extradition.

Paragraph 5 (continued)

2. The CHAIRMAN recalled that the Committee had accepted in principle the text of paragraph 5, as it appeared in the draft convention but without the phrase in square brackets. He suggested that the phrase in brackets at the beginning of the paragraph be amended to read "Without prejudice to the provisions of . . .", it being understood that the phrase should be completed as appropriate at a later stage, when the paragraph as a whole would be submitted for approval.

3. Mr. AL-OZAIR (Yemen) said that if the phrase in brackets was to be retained, he would prefer it to read "Taking into consideration the provisions of . . .".

4. Mr. KATHOLNIGG (Federal Republic of Germany) supported the amendment suggested by the Chairman, with the proviso that if the Committee encountered great difficulty in completing the phrase, he would be in favour of its deletion.

5. The CHAIRMAN asked whether the Committee approved the suggestion he had made.

6. The amendment suggested by the Chairman was approved.

Paragraphs 6 and 7 (E/CONF.82/C.1/L.21)

7. Mr. KAPEL Rud (Norway), speaking on behalf of his own delegation and those of Denmark, Finland and Sweden, said that article 4, paragraph 6, created very serious problems for all of them. Believing that the protection of the rights of the person sought was one of the most significant principles in international law, they considered that a State should never be obliged to extradite its nationals. The thrust of the second sentence of the draft before the Committee lay in the direction of securing such extradition when the proposed safeguard clauses were not applicable—an initiative which the countries in whose name he spoke found highly inappropriate in an international instrument.

8. In view of those serious reservations, the deletion of the entire paragraph might spare the Committee a prolonged debate which would doubtless see a polarization of delegations' positions. On the other hand, there might be room for further discussion of a text if it were made perfectly clear that the extradition of nationals would be optional, any safeguard clauses adopted making clear reference to domestic law. The Nordic countries all reserved the right, under all circumstances, to determine for themselves whether offences should be characterized as political or politically motivated.

9. Other delegations could rest assured that the Nordic countries were able to and indeed did punish their own nationals for the offences under consideration, even if committed abroad, having established the broadest possible jurisdiction in that respect. The seriousness with
which they addressed the problem would, he believed, become even more apparent when the Committee examined their proposed amendment to article 2 bis (E/CONF.82/C.1/L.23). In their view article 2, paragraph 7, article 2 bis and article 4, paragraph 6, were linked and involved a matter of fundamental concern to them.

10. In a spirit of compromise, he could announce that deletion of the reference to political or politically motivated offences in article 2, paragraph 7, would make it much easier for the countries in whose name he spoke to pursue the discussion of an acceptable safeguard clause in article 4, paragraph 6.

11. Mr. AL-OZAIR (Yemen), introducing the amendment he had submitted in document E/CONF.82/C.1/L.21, pointed out that the reference to "paragraph 1 of this article" in the first paragraph should read "paragraph 1 of article 2". The substance of the amendment was in his view similar to that of paragraph 6 as drafted in document E/CONF.82/3, but the text was more concise. Its essential purpose was to ensure that in the case of non-extradition of nationals accused or convicted of an offence, the requested Party would take steps, within the limits of its domestic law, to ensure that the persons in question did not escape the process of justice.

12. Mr. POPOV (Bulgaria) said that he shared the concerns which had been expressed on behalf of the Nordic countries. In his delegation's view paragraph 6 contained quite unacceptable provisions which erected virtually insurmountable political and legal barriers. Nor could his delegation accept, even in principle, the amendment submitted by Yemen.

13. Mr. BAEYENS (France) said that the opening phrase of paragraph 6, placed in brackets, should be deleted, as it weakened the scope of the convention. He shared the preoccupation expressed on behalf of the Nordic countries concerning the second sentence of paragraph 6, which had been placed in square brackets. The extradition of nationals was prohibited by French law and he therefore would like to see that sentence deleted. The final sentence of the paragraph, also in square brackets, was in the nature of a recommendation and, as such, out of place in the draft convention. He favoured its deletion.

14. Mr. LAVIÑA (Philippines) considered that the substance of the first part of the first sentence of paragraph 6, contained in brackets, was covered by the agreement reached, at least in principle, concerning paragraph 5, and that the phrase in question might consequently be deleted. For the same reason, he considered that the second sentence of the paragraph, which was enclosed in brackets, might also be deleted. More generally, he feared that the frequent, if not virtually constant, references to domestic law in the text might dilute or even render meaningless many of the provisions of the convention and thereby weaken the international community's efforts in its struggle against drug trafficking.

15. Mrs. GOLAN (Israel) said that the extradition of nationals posed a problem for her country; she would prefer the deletion of all references to such extradition from the text, but hoped that domestic jurisdictions would be strengthened as a counterpart. She agreed with those who considered that the opening phrase of paragraph 6 might be deleted, since it weakened the purpose of the convention.

16. Mr. CAPEK (Czechoslovakia) said that in accordance with what was deemed both in theory and in practice a fundamental principle of public order, his country's penal code prohibited the extradition of nationals. He would therefore find it difficult to accept any provision for the extradition of nationals which was not accompanied by a safeguard clause referring to domestic law. For that reason, he believed it important to retain in paragraph 6 the phrase beginning "... except in cases where refusal is required by...".

17. Mr. XU Hong (China) favoured retention of the first sentence of paragraph 6, and deletion of the second sentence beginning "[To this end...]."

18. Noting that the non-extradition of nationals was an established principle in most countries of the world, he suggested that if the balance of the proposed convention were to tilt in the opposite direction, the significance of the instrument as a basis for universality in international practice would be seriously jeopardized. The principal requirement, in his view, was to establish clearly in the convention that there must be either extradition or prosecution. A requested Party which was unable or refused to extradite a national must be obliged to ensure local prosecution and punishment. He further believed that the substance of the last sentence of paragraph 6, which had been placed in brackets, was implicit in the first sentence, and might therefore be superfluous.

19. Ms. MARTINS (Portugal) said that her delegation considered it important to retain in the convention a reference to constitutional limitations on extradition. She could, however, accept the deletion of such a reference from paragraph 6 if it was unequivocally established that the grounds for extradition alluded to in paragraph 5 included those limitations.

20. Mr. AL-OZAIR (Yemen) suggested that his country's amendment in document E/CONF.82/C.1/L.21 met the concerns which had been expressed by the representative of Norway. It was made clear in that amendment that the bringing of nationals to justice at the request of a Party would not necessarily require extradition.

21. Mrs. DZIETAM (Cameroon) said that the principle of non-extradition of nationals was written into her country's legal system. She agreed with the spokesman for the Nordic countries that any formulation which opened the way to such extradition should be removed from the draft convention.

22. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that his country's laws on extradition specifically excluded the extradition of nationals.

23. Mr. GONZALEZ FELIX (Mexico) said that the extradition of nationals was also impossible under
24. He reminded the Committee that during its consideration of article 2, paragraph 7, it had been agreed that the question of the right of asylum would be dealt with under article 4. It might perhaps be taken up in connection with paragraph 6 of the article.

25. The CHAIRMAN suggested that, for the present, the Committee should concentrate on the draft text of paragraph 6 and the amendment of Yemen thereto, and not address partial or additional issues.

26. Mr. ARENA (United States of America) said that, notwithstanding the importance of the different constitutional limitations, legal systems and domestic laws of the countries represented at the Conference, the common purpose was surely to recognize the seriousness of the threat posed by narcotics traffickers to the political and economic stability of the international community as a whole, and to elaborate an effective and powerful instrument that would serve as a weapon to counter that threat. In his country's experience the extradition of traffickers, regardless of their nationality, constituted one of the most effective components of such a weapon. The United States delegation consequently proposed the unconditional exclusion of refusal of extradition on the ground of nationality.

27. It had long been the policy of his country and others, in law enforcement and in their legal systems, that the proper place for prosecution was where the crime had been committed and/or where its effects had been most harmful. Like many other countries, the United States extradited its nationals, a practice which had proved most effective, primarily because one element of the fight against drug trafficking was the elimination of havens where offenders could pursue their activities with impunity.

28. All references to habitual residence should, in his view, also be deleted from paragraph 6. To prohibit the extradition of both nationals and habitual residents would, he believed, be to act against what he understood to be the basis of non-extraditability of nationals, namely a country's fundamental right of personal jurisdiction over its citizens.

29. He urged the Committee to consider very carefully the language employed in the third sentence of paragraph 6 which stipulated that a Party might elect or decline to consider the convention as satisfying a domestic requirement that extradition be subject to the existence of a treaty. That provision would be advantageous to certain States which had expressed a desire to exempt nationals but did not have jurisdiction based exclusively on nationality.

30. The question of the choice, for States, between extradition and prosecution could, he thought, be best discussed under article 4, paragraph 8.

31. Mr. METAXAS (Greece) endorsed the remarks of the representative of France. The extradition of nationals was excluded by the domestic legislation of his country. Greek law was applicable to Greek nationals, even when the offence was committed in another country.

32. Mr. AL-NOWAISER (Saudi Arabia) said that, in principle, the provisions included in the convention should not be of a constraining nature, placing obligations on countries. In their collective interest, the participants in the Conference should endeavour to agree on a text which would serve all Parties equally; its clauses should be optional.

33. In connection with article 4, paragraph 6, he supported the view that the greatest care should be taken not to infringe national sovereignty and that the second sentence of the paragraph should be deleted. The essential aim should be to ensure that countries could reach a decision in matters of extradition on the basis of their own domestic legislation.

34. Mr. FOFANA (Senegal) said that the question of extradition was adequately dealt with in paragraphs 1 to 5 of article 4, on which agreement had virtually been reached. Since his country's domestic legislation and international agreements to which it was a Party excluded the extradition of nationals, any text providing for such extradition was unacceptable to his delegation, which called for its deletion.

35. Mr. ABBAD (Algeria) found paragraph 6 too cumbersome in its present form. He supported the amendment proposed by Yemen (E/CONF.82/C.1/L.21).

36. Mrs. JONES (United Kingdom) said that there was little purpose in paragraph 6, any substance in it being covered elsewhere in the draft convention. Nevertheless, the sentences in it which indicated that the Parties should facilitate extradition could perhaps be approved as a general statement of intent.

37. The substantive point, dealt with in article 4, paragraph 8, and in article 2 bis, was that if a requested Party did not extradite for whatever reason, including the fact that the fugitive was a national of the requested Party, it should submit the case to its competent authorities to be dealt with in so far as the jurisdiction referred to in article 2 bis allowed. The United Kingdom did extradite its nationals but did not have jurisdiction based exclusively on nationality.

38. She was in favour of deleting the whole of paragraph 6 and could not support the amendment of Yemen. She did, however, agree with the United States representative's remarks concerning the provision in the third sentence of the paragraph.

39. Mr. ABDUL SAMIA (Libyan Arab Jamahiriya) said that extradition of nationals was prohibited by his country's legislation and he could therefore not accept any wording that implied any possibility of such extradition. He was in favour of the deletion of the words "Except as otherwise provided in this article" at the beginning of paragraph 5.
40. Mr. OUCHARIF (Morocco) said that his country did not allow the extradition of its nationals. However, a requesting Party could ask it to take the necessary steps to bring an accused person to justice in accordance with Moroccan domestic legislation. If paragraph 6 was retained, it should be amended in accordance with the proposal of Yemen (E/CONF.82/C.1/L.21).

41. Mr. AL-SHARARDA (Jordan) said that his country’s domestic legislation did not allow the extradition of nationals. However, there were laws under which Jordanian nationals could be brought to justice if they had committed drug offences in other countries.

42. Mrs. IBRAHIM (Malaysia) said that she would prefer to see the phrase “Subject to its constitutional limitations, legal system and domestic law” removed from paragraph 6. If it was retained she would wish it made to refer only to constitutional limitations of fundamental domestic law.

43. She would also like to see the second sentence deleted and could agree to its retention only if the safeguard clause were included. She approved the last sentence of the paragraph, which referred to discretionary power.

44. Mrs. OLIVEROS (Argentina) observed that the constitution of a country included its legal system and domestic law, reference to which in paragraph 6 was therefore superfluous.

45. The extradition of nationals was one of the most important legal issues arising under the convention. Her delegation could admit only the strict application of the principle _aut dedere aut judicare_.

46. Mr. DUFT (German Democratic Republic) supported the views expressed by the Czechoslovak, Bulgarian and French delegations.

47. Mr. WELLS (Australia) said that there was a link between paragraphs 6 and 7 of article 4. Paragraph 7 was essentially addressed to common law countries with procedural requirements such as the _prima facie_ evidence rule, which often made it difficult for civil law countries to secure extradition. Under that paragraph, Parties were obliged to endeavour to minimize procedural and evidentiary requirements for extradition.

48. In the interest of achieving progress in the discussion, his delegation was attempting to prepare a new text to replace articles 6 and 7. The text would not be of a mandatory nature but would simply call on Parties which found it appropriate to do so to minimize their restrictions on the extradition of nationals and their procedural and evidentiary requirements.

49. Mr. AL-MUBARAKI (Kuwait) favoured the deletion of paragraph 6 in its entirety. If the paragraph was retained his delegation would be unable to accept its provisions concerning extradition of nationals.

50. Mr. VIANA de CARVALHO (Brazil) said that, for constitutional reasons his country could not accept a convention containing a clause providing for the extradition of nationals. He therefore opposed the inclusion in the draft of any such provision.

51. Mrs. VEVIA (Spain) said that a reference to the legal system alone would be sufficient in the first sentence of paragraph 6. In the case of Spain the relevant provision was not in the Constitution but in a law on extradition.

52. She would not oppose deletion of the reference to habitual residence or deletion of paragraph 6 in its entirety. In view of the legal obstacles in the majority of countries to the extradition of nationals, the paragraph would in any case have no practical application because of lack of reciprocity.

53. Mr. MADDEN (Jamaica) said that he could not accept a text which made extradition of nationals mandatory. A discretionary provision might, however, be acceptable.

54. In the light of the discussion there seemed little prospect of retaining paragraph 6 in a useful form. He would in any case be in favour of deleting the reference in the paragraph to habitual residence.

55. Mr. GUNERY (Turkey) said that his country’s internal law did not allow extradition of nationals. Paragraph 6 should in his view be deleted.

56. Mr. KATHOLNIGG (Federal Republic of Germany) said that extradition of nationals was prohibited under his country’s Constitution and any convention providing for it would be unacceptable to his delegation. He believed that, for the reasons given by the representative of the United Kingdom, paragraph 6 should be deleted.

57. The principle _aut dedere aut judicare_ was an important one for his Government. However, since it was already reflected in article 4, paragraph 8, he would prefer to discuss it and the second paragraph of the proposal of Yemen in that connection with that paragraph.

58. Mr. OERIP (Indonesia) said that his country’s law also prohibited the extradition of nationals. Paragraph 6 should be deleted, as the discussion had shown that there was only a limited possibility of its implementation.

59. Mr. VALL (Mauritania) said that his delegation considered it important to achieve a strong convention and could not accept any mandatory provisions concerning the extradition of nationals. It could accept any amendments which were consistent with that approach.

60. Mr. STEWART (United States of America) said that his delegation would be glad to participate in the formulation of a new text along the lines suggested by the Australian representative. It would like a provision favouring the extradition of nationals but, in view of the statements which had been made, it would adopt a flexible attitude.

61. Mr. SUCHARIKUL (Thailand) wished to see the whole of paragraph 6 deleted, since his country’s law did not allow extradition of nationals.
62. Mrs. KATHREIN (Austria) was also in favour of deletion of the entire paragraph.

63. Mr. RAMADHANI (United Republic of Tanzania) said that nationals of his country could be extradited only under a bilateral treaty. His delegation favoured the inclusion of an escape clause in paragraph 6, for without it, as the discussion had made clear, many States Parties would have to enter reservations.

64. Mr. OSHIKIRI (Japan) agreed with the Indonesian representative that paragraph 6 should be deleted entirely. The provision might operate differently between Parties which made extradition conditional on the existence of a treaty and between Parties which did not.

65. Mr. KURAA (Egypt) said that he could not accept the provisions of paragraph 6, in particular those referring to the extradition of nationals, which were contrary to the practice of his country and of the majority of States represented at the Conference.

66. The proposal of Yemen (E/CONF.82/C.1/L.21) would be acceptable to his delegation if reworded as follows:

"6. Without prejudice to their domestic laws, Parties shall facilitate the extradition of persons accused or convicted of offences established in accordance with paragraph 1 of article 2.

"If the persons requested to be extradited are nationals of or have their habitual residence in the territory of the requested Party and the acts constituting the offence were committed in whole or in part in the territory of the requesting Party, and the domestic law of the requested Party does not allow their extradition, the requested Party shall, if possible, bring those persons before the legal authorities in its country for trial."

67. Mr. SHING (Mauritius) said that his country had no legal objections to extraditing its nationals. It was clear, however, that a consensus could not be reached on paragraph 6. He therefore suggested that consideration be given to the proposal to be submitted by Australia.

68. Mr. MOHSENZADA OMAR (Afghanistan) said that his country's Constitution prohibited the extradition of its nationals. If a compromise could not be reached, his delegation could accept the deletion of paragraph 6.

69. Mrs. OLIVEROS (Argentina) said that, in her delegation's view, a convention which provided for the extradition of nationals would represent progress. Her delegation was nevertheless prepared to consider the new text to be proposed by Australia, which should take account of the principle aut dedere aut judicare. If paragraph 8 were redrafted to make it clear that extradition would be granted on the basis of that principle, the reference in paragraph 6 to the extradition of nationals could be deleted.

70. Mr. LAVIÑA (Philippines) suggested that the Australian proposal should be considered as it would be a pity to delete paragraph 6 after so lengthy a discussion.

71. The CHAIRMAN said that the second paragraph of the Yemeni amendment and the proposal of Egypt related to the principle aut dedere aut judicare, which was dealt with in article 4, paragraph 8. They could therefore be discussed under that paragraph. Although there appeared to be a clear majority in favour of deleting paragraph 6 and a majority against providing for the extradition of nationals, there still remained a possibility of a compromise. He invited the Australian representative to present his proposal.

72. Mr. WELLS (Australia) proposed that paragraph 6 should be amended to read as follows:

"6. 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, the 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."

73. Mr. ABBAD (Algeria) said that his delegation found it very difficult to accept the Australian proposal. Should that text be approved it would have to express a reservation. It supported the amendment proposed by Yemen.

74. Mr. OUCHARIF (Morocco) said he had thought the proposal by Australia would provide the basis for a compromise. However, the use in that text of the word "minimize" implied that the principle of the extradition of nationals had been accepted. Most delegations had indicated that their country did not accept that principle.

75. His delegation approved the idea of combining paragraphs 6 and 7 and referring in separate subparagraphs to extradition of nationals and procedural requirements. It would nevertheless prefer the complete deletion of paragraph 6. Paragraph 7 should be retained without amendment.

76. Mr. AL-OZAIR (Yemen) said he would have difficulty in accepting the Australian amendment because his country's Constitution prohibited the extradition of nationals.

77. Mr. KATHOLNIGG (Federal Republic of Germany) said that his delegation also had difficulty with the text proposed by Australia. He saw no purpose in further discussion of any text providing for extradition of nationals.

78. Mr. LAVIÑA (Philippines) expressed interest in the Australian proposal because it did not require the extradition of nationals or even minimize the requirement, if there was one, to extradite nationals, but merely appealed to States to minimize any restrictions. He suggested that the proposal should be considered by a small working group.
79. Mr. BAHEYENS (France) said that his delegation shared the view expressed by the representative of the Federal Republic of Germany concerning the Australian proposal. It was not possible for Parties to minimize something which did not appear in their legislation. His delegation associated itself with those which had proposed the deletion of the whole of paragraph 6.

80. Mr. ABDUL SAMIA (Libyan Arab Jamahiriya) was unable to accept the Australian amendment. He reiterated his delegation’s inability to accept the principle of the extradition of nationals.

81. Mr. TARANENKO (Ukrainian Soviet Socialist Republic) said his delegation did not believe a Party could put its signature to an obligation, even when reduced to a minimum, to provide for the extradition of nationals. It was difficult to envisage how a Party could minimize something which did not exist in its legislation or constitution.

82. Even if the Australian amendment were to be approved, there was absolutely no need for it to refer to domestic legislation. Article 4 would not be harmed by the deletion of paragraph 6.

83. Mr. AL-NOWAISER (Saudi Arabia) said that his delegation had no difficulty in accepting the Australian proposal, in principle, but suggested that the beginning of the second sentence should read: “To that end and taking into consideration the object and purpose of this Convention, Parties should endeavour to minimize, according to domestic law and internal limitations.”

84. Mr. AL-SHARARDA (Jordan) said that his delegation would have difficulty in accepting the proposal by Australia, and insisted that no reference should be made to extradition of nationals.

85. Mr. VIANA DE CARVALHO (Brazil) said that his country would be unable to minimize anything that was embodied in its Constitution.

86. Mr. FOFAANA (Senegal) said that his delegation could not accept the Australian proposal because it was not possible for a Party to minimize something which did not exist in its legislation.

87. Mr. AL-MUBARAKI (Kuwait) said that his delegation could not accept the principle of the extradition of nationals because it was in contradiction with Kuwait’s Constitution and internal legislation. His delegation therefore supported those which had expressed disapproval of the Australian amendment. It would prefer the deletion of the whole of paragraph 6.

88. The CHAIRMAN said that the minimizing of requirements when no requirements existed certainly presented a problem. However, in his personal view, there were cases in which there was scope for such minimizing, where domestic law allowed a discretionary power in the matter of extradition of nationals.

89. He therefore suggested that the text proposed by Australia should be modified to read as follows:

“6. 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, Parties shall endeavour, where domestic law confers a discretionary power on competent authorities to grant extradition of its nationals or habitual residents, to ensure, as far as possible, that the power is exercised.”

90. That wording did not raise the question of the appropriateness of permitting extradition of nationals. It applied to those legal systems where a discretionary power existed.

91. Mr. KATHOLNIGG (Federal Republic of Germany) said that he had difficulty in establishing the relationship between the first sentence suggested by the Chairman and paragraph 5 of article 4. Was it proposed that the extradition of persons should be facilitated even if this were not allowed by national law? This could not be possible when the law of the requested Party did not allow extradition, and in particular extradition to a country where the death penalty existed. It was necessary to establish a link between paragraphs 5 and 6 of article 4.

92. He questioned the need for the second sentence of the text proposed by the Chairman. So far as he was aware, the discretionary power referred to existed in only one country, Italy.

93. Mr. OUCHARIF (Morocco) said that, if the text proposed made provision for the extradition of nationals where legislation did not allow it, his delegation would not oppose it, provided the exceptional cases envisaged included countries which accepted the extradition of their nationals.

94. Mr. FERRARIN (Italy) said that his delegation supported the wording proposed by the Chairman, which provided a good basis for a compromise solution.

95. Mr. POPOV (Bulgaria) said that his delegation appreciated the efforts made to find a compromise solution, but pointed out that the prolonged discussion had revealed a ten to one majority of delegations whose national constitution and legislation allowed for no minimizing that would change the situation. He was concerned that, if there was continuing discussion on issues where there was a clear majority preference, and the will of the majority was ignored, the debate might never end.

96. Mr. BOBIASZ (Canada) said that his delegation supported the approach adopted by the Australian delegation and the Chairman. It also saw a relationship between the issue of extraditing nationals and that of reducing procedural impediments to extradition.

97. His country was prepared to accept an obligation to endeavour to minimize procedural impediments, on the understanding that others would endeavour to minimize impediments to the extradition of nationals. The inability
Committee I—16th meeting

Tuesday, 6 December 1988, at 7.45 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4 (continued)

Paragraph 10

1. Mr. BRUCE (Ghana) said that the paragraph was clear and straightforward. He proposed that it should be approved as it stood.

2. Mr. OUCHARIF (Morocco) said that, should the Committee decide to make paragraph 10 an optional requirement, he would propose that paragraphs 3 and 10 of article 4 should be combined.

3. The CHAIRMAN pointed out that both the open-ended intergovernmental expert group and the Review Group had felt it desirable that the provision on the implementation of extradition procedures should be in a separate paragraph from the provision on their enhancement. He took it that the Committee wished to approve the paragraph as it stood.

4. It was so agreed.

Paragraph 11

5. Mrs. VEVIA (Spain) said that she had no preference concerning the choice between the words "shall" and "may". However, the paragraph was a fundamental one and she could not accept it without it stipulating that the sentenced person must consent to his transfer. She therefore proposed that the words "who agree to it" be inserted at a suitable place in the paragraph.

6. Mr. OUCHARIF (Morocco) said that the force of the paragraph lay elsewhere than in the choice between "shall" and "may". The consent of the prisoner should be a prerequisite for the application of the provision, and he therefore supported the proposal by Spain.

7. Mr. AL-NOWAISER (Saudi Arabia), supported by Ms. IBRAHIM (Malaysia), Mr. LAVÍNA (Philippines), Mr. OERIP (Indonesia), Mr. VALL (Mauritania), Mrs. OLIVEROS (Argentina), Mr. KURAA (Egypt), Mr. MADDEN (Jamaica) and Mr. SHING (Mauritius) proposed that the word "may" should be employed.

8. Mr. LIEBERT (Papua New Guinea) said that neither "may" nor "shall" was ideal. The proposal by the representative of Spain had some merit. The word "origin" in the expression "country of origin" would pose problems, however, and he proposed that it should be replaced by the word "citizenship".

9. Mr. LAVÍNA (Philippines) opposed the introduction of the notion that the prisoner should give his consent to transfer. The right to consent to a transfer was not one which prisoners enjoyed in most countries and he particularly opposed it being available where drug trafficking was involved.
10. Mr. BAILEY (Secretary of the Committee) suggested that the phrase "subject to their consent" should be inserted after the word "transfer" and that the words "or citizenship" should be added after the words "country of origin".

11. Mr. FOFANA (Senegal) supported the proposal to include the requirement of the prisoner's consent.

12. Mr. VALL (Mauritania) said that the French version of the Council of Europe Convention on the Transfer of SentencedPersons used the term "transfert" as the equivalent of the word "transfer". He proposed that the same term should be used in the French version of paragraph 11.

13. Mr. BAEYENS (France) agreed.

14. The CHAIRMAN suggested that the Committee might wish to approve that purely linguistic change without reference to the Drafting Committee.

15. It was so agreed.

16. Mr. SCHUTTE (Netherlands) proposed that the paragraph should begin with the words "The Parties shall consider the possibility of"—a formulation similar to that in article 5 bis—and that the expression "country of origin" should be replaced by the words "home country"; the notion of "home country" was not a legal one, but it was not the intention of the convention to legislate. The prisoner should certainly be given the right of consent to transfer.

17. Mr. AL-MUBARAKI (Kuwait) supported the Netherlands proposal for the opening words of the paragraph and the idea that the paragraph should include the notion of consent to transfer.

18. Mr. KURAA (Egypt) said that the word "imprisonment" was ambiguous; under the Egyptian Penal Code there were three categories of deprivation of liberty: detention, imprisonment and hard labour. Was the paragraph intended to cover only the second of those categories? He pointed out that the word "citizenship" was equally as problematic as the word "origin", but that the word "origin" was closer to the intention of the paragraph. He insisted on the need for prisoners of all categories to give their consent to transfer; he could not accept the paragraph unless the notion of consent was included.

19. Mr. MADDEN (Jamaica) said that, in his view, the requirement of consent might be better provided for in the bilateral or multilateral agreements which the paragraph contemplated, as should any definition of "origin" or "citizenship". However, he would not oppose the inclusion of the notion of consent in the draft.

20. Mr. SORIA GALVARRO (Bolivia) supported the proposal by the Netherlands representative for the opening words of the paragraph and the idea that it should include the notion of the prisoner's consent.

21. Mr. SHING (Mauritius) approved the text suggested by the Secretary.

22. Mr. OUCHARIF (Morocco) proposed that the words "to facilitate the transfer of" should be replaced by the word "concerning" and that the word "imprisonment" should be replaced by the word "penalties". He urged the Committee to agree on a text without going too much into details, which were best left to regulation in national legislations.

23. Mr. ERSAVCI (Turkey) supported the text proposed in document E/CONF.82/3.

24. The CHAIRMAN said that the majority of the Committee appeared to favour the optional version of the text and also the inclusion in it of a reference to the consent of the sentenced person. He himself saw considerable merit in the suggestion to use the term "home country" instead of referring to "origin" or "citizenship". Accordingly, he suggested the following text:

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

25. Mr. GONZALEZ FELIX (Mexico) approved the text proposed by the Chairman but said he would prefer the words "their country of origin or citizenship" to the words "their home country".

26. The CHAIRMAN suggested the deletion of the word "home" from the text he had proposed.

27. Mr. LAVIÑA (Philippines) reiterated the objection his delegation had raised concerning the subject of consent.

28. Mr. OSTROVSKI (Union of Soviet Socialist Republics), referring to the text proposed by the Chairman, said that the phrase "subject to their agreement" should follow the verb "to transfer", and not the verb "to facilitate". He suggested that the expression "deprivation of liberty" should replace the term "imprisonment" since the former term would cover any custodial sentence that might be imposed. The words "home country" should be amended to read "country of origin and citizenship".

29. Mrs. VEVIÀ (Spain) supported the proposal regarding the position of the words "subject to their agreement". She reiterated her view that the convention should provide explicitly for sentenced persons to have consent to their transfer.

30. Mr. OUCHARIF (Morocco) also reiterated his position on that point. Failure to provide for such consent would imply the abandonment of an important principle which had been embodied in other agreements.

31. Mr. SCHUTTE (Netherlands) said that some States made the consent of the convicted person a prerequisite
to transfer, while others had extradition conventions which allowed for transfer without consent. He therefore suggested rewording the beginning of the paragraph to read: "The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer of persons..." He could accept the use of words "their country".

32. Mr. GONZALEZ (Chile) agreed with the representative of Spain that prisoners’ consent to transfer should be secured, but said he felt that the matter could safely be left to the discretion of the Parties. He supported the use of the terms "deprivation of liberty" and "their country".

33. Mr. BAЕYENS (France) said that all the relevant conventions signed by France included a clause relating to the consent of sentenced persons. A similar proviso should be included in the present convention.

34. Mr. VALL (Mauritania) said that his delegation had reservations on the proposal to include a consent proviso in the convention.

35. Mr. OUCHARIF (Morocco) said that he could support the proposal just made by the Netherlands if the suggested wording meant that the convention would provide a framework within which individual Parties to it would reach agreement on the subject of consent. Otherwise, his delegation would insist on the notion of consent being spelt out in the paragraph.

36. Mrs. VEВIA (Spain) said that, since her delegation required a reference to the consent of sentenced persons to be included in the convention, it would ask for Spain's views on the subject to be recorded in the Final Act of the Conference if the Conference did not agree to the inclusion of the reference in the text of the convention.

37. Ms. IBRAHIM (Malaysia) said that the text of paragraph 11 read out by the Chairman was satisfactory, although she could also accept the latest Netherlands proposal.

38. Mr. LAVIÑA (Philipines) said that sentences other than deprivation of liberty might be imposed. He therefore suggested replacing the words "sentenced to imprisonment" in the Chairman’s text by the words "convicted of offences".

39. The CHAIRMAN said that the transfers referred to would only be appropriate in the case of sentences involving deprivation of liberty. He invited the Committee to consider the following text for paragraph 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."

40. The text was approved.
53. Mr. AL-YAMI (Saudi Arabia) drew attention to the statement made by his delegation at the previous meeting (E/CONF.82/C.1/SR.15, para. 32).

54. Mr. VALL (Mauritania) said that his delegation accepted the first sentence of the Chairman's text as amended by the representative of Egypt.

55. Mrs. KATHREIN (Austria) said that her delegation would like paragraph 6 to be deleted altogether but could accept the Chairman's text in the interests of a consensus. She felt, however, that the first sentence of the text did not reflect adequately the seriousness of the offences involved.

56. Mr. KATHOLNIGG (Federal Republic of Germany) said that the second sentence of the Chairman's text served little purpose, but if other delegations found it useful he would not maintain his objection to it. He had, however, an objection to the first sentence with regard to the word "facilitating", which was bound to affect the provisions of article 4, paragraph 5. His country, for one, could not facilitate an extradition which was not allowed by its own laws. He accordingly proposed the addition, at the beginning of the first sentence of the Chairman's text, of the opening proviso suggested by Yemen in document E/CONF.82/C.1/L.29, namely: "Subject to their constitutional and legal limitations". That language was narrower than that of the original paragraph 6. With that wording, his delegation could accept the Chairman's amendment; that solution should also meet the point raised by the Austrian delegation.

57. On a point of drafting, he said that the concluding words "paragraph 1 of article 2" in the first part of the Chairman's amendment were inappropriate; the more correct legal language would be "article 2, paragraph 1".

58. Mrs. MOLOKWU (Nigeria) supported the Chairman's amendment.

59. Mr. GONZALEZ FELIX (Mexico) supported the views expressed by the representatives of Austria and the Federal Republic of Germany. His delegation could approve the Chairman's text if the proviso suggested by the Federal Republic was included in it.

60. Mr. POPOV (Bulgaria) said that the first sentence of the Chairman's amendment (E/CONF.82/C.1/L.29) caused him some doubts. The words "extradition of persons accused or convicted" implied an obligation on the part of the Parties to facilitate the extradition of those persons, but in many countries, including his own, there were constitutional and legal obstacles to that. Was it intended that the new convention should create for a Party an obligation to extradite one of its own nationals? Such an extradition would be legally and politically impossible for countries like his own.

61. The second sentence of the Chairman's amendment should be more precise: it should specify that the Parties to which it referred were those whose domestic law allowed the extradition of nationals.

62. Mr. VIANA de CARVALHO (Brazil) approved the Chairman's text as amended by the Federal Republic of Germany.

63. Mr. OSHIKIRI (Japan) supported the Chairman's text as it stood.

64. Mr. OERIP (Indonesia) said that his delegation could accept the Chairman's amendment with the opening proviso proposed by the Federal Republic of Germany.

65. Mr. ABBAD (Algeria), supported by Mr. AL-SHARARDA (Jordan), approved the addition of that opening proviso.

66. The CHAIRMAN said that there appeared to be general agreement that the first sentence of his proposal (E/CONF.82/C.1/L.29), as amended by the Federal Republic of Germany, was acceptable. There appeared to be substantial support for the second sentence as well.

67. Mr. MADDEN (Jamaica) said that his delegation found the second sentence unnecessary. If the Committee approved the sentence, his delegation would enter a reservation on it.

68. Mr. KATHOLNIGG (Federal Republic of Germany) supported the proposal by Mauritius for the second sentence, which would make the provision clearer.

69. Mr. KURAA (Egypt) said that the second sentence of the Chairman's amendment created enormous difficulties for his delegation. Any provision which might lead to the extradition of a national would conflict with the limitations embodied in the Constitution and laws of his country, among others. He therefore wished to place on record his delegation's objection to the inclusion of that sentence in the draft. His delegation could, however, accept the first sentence of the Chairman's text as amended by the Federal Republic of Germany.

70. Mr. MEYER (United States of America) said that, with regard to the substance of the Chairman's proposal, his delegation had no objection to the first sentence. It did have a difficulty, however, with the second part, which applied only to those States whose law allowed them to extradite their own nationals. For the others, it could only create an obligation to act in good faith.

71. His delegation was concerned that, if the Chairman's amendment was approved, it would have the effect of eliminating all the rest of the original paragraph 6, which would have serious implications for other parts of article 4. His delegation would have informal discussions with other delegations on that point and was not yet in a position to take a final view on the Chairman's amendment.

72. Mr. SCHUTTE (Netherlands) said that without the second sentence, the first sentence of the Chairman's amendment would have no real meaning. His delegation
17th meeting
Wednesday, 7 December 1988, at 11.20 a.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4 (continued)
(E/CONF.82/C.1/L.21, L.29)

1. Mr. MEYER (United States of America) said that he wished to present a far-reaching proposal which he hoped would expedite the Committee's consideration of article 4. As it appeared in document E/CONF.82/3, that article represented an attempt by the open-ended intergovernmental expert group to strike a balance between two different approaches to extradition, as between States which did extradite their own nationals, and States which, for constitutional reasons or reasons of domestic law or tradition, did not do so. Such a balance was difficult to achieve. The various paragraphs of article 4 were interdependent, so that changes to one paragraph could not be considered in isolation from their impact on other paragraphs, and on the balance between the two approaches to extradition.

2. He proposed that in paragraph 3 the square brackets and the word "shall" should be deleted, so that the last phrase of the paragraph would begin "it may consider this Convention...". He next proposed that paragraphs 6 and 7 should be deleted in their entirety. Countries which did extradite their own nationals would have great difficulty in implementing paragraph 7 as it stood, because of the requirement to accept a valid arrest warrant as a sufficient basis for extradition. As presently drafted, the paragraph was unbalanced.

3. In paragraph 8, he proposed that prosecution, at present regarded as mandatory in cases where a State refused to extradite its own nationals, should no longer be mandatory except where the requesting State requested prosecution; in other cases, the requested State would be free to choose whether to prosecute or not. The words "at the request of the Party requesting extradition" should therefore be included in the paragraph.

4. Paragraph 9 was of limited application, and he therefore proposed that it should be deleted.

5. As a result of those changes, some consequential changes would have to be made in paragraph 5, where the phrase "except as otherwise provided in this article" would no longer be appropriate, and in article 2 bis, paragraph 2.

6. The CHAIRMAN said that the United States proposal was helpful in many ways but might give rise to problems in relation to earlier decisions of the Committee.

would be unable to approve the first sentence without the second.

73. The CHAIRMAN agreed that there was a linkage between the two sentences of his proposal.

74. Mr. KATHOLNIGG (Federal Republic of Germany) said that paragraph 6, like paragraph 7, dealt with procedural questions. The second sentence of the Chairman's amendment seemed a useful way of achieving a balance between the requirements of different legal systems.

75. Mr. GONZALEZ (Chile) said that the original text of paragraph 6, the Chairman's amendment (E/CONF.82/C.1/L.29) and the amendment by Yemen (E/CONF.82/C.1/L.21) all dealt with the same two matters: first, the facilitating of extradition, and second, the extradition of nationals. There was no doubt that both those matters would be subject to the domestic law of the requested Party, and also to the provisions of relevant treaties binding the Parties concerned. That condition was clearly set forth in paragraph 5, which sufficiently covered the two matters to which he had referred. He therefore suggested that paragraph 6 should be deleted.

76. Mrs. VEVIA (Spain) said that she agreed with the representative of the Netherlands that the first sentence of the Chairman's amendment would have no meaning without the second sentence.

77. Mr. POPOV (Bulgaria) said that he shared that view.

78. Mr. MEYER (United States of America) said that his delegation, possibly with others, would put forward a further proposal on the subject under consideration, as well as on certain other matters, at the next meeting.

The meeting rose at 10.15 p.m.
7. Mr. KATHOLNIGG (Federal Republic of Germany) said he was not sure that the approach adopted by the United States delegation was the right one. If one of the objectives of the convention was to establish machinery for the extradition of persons accused or convicted of drug offences, why not make it as effective as possible in the case of countries which extradited their nationals? It would be a pity to delete paragraph 6, since the Committee had very nearly reached agreement on that paragraph at the previous meeting. Paragraph 7 would help to make extradition more effective. It was one of the few paragraphs that contained no square brackets, and so far it had given rise to no objections. In the case of paragraph 8, he did not understand why the United States delegation was proposing to limit the extradition obligation to cases where the State refused extradition on the basis of nationality. The deletion of paragraph 9 seemed unnecessary since it might prove useful in the further development of international law.

8. Mr. LAVIÑA (Philippines) said that the United States proposal was very radical and a decision on it could not be taken immediately. He suggested that a small working group should be set up to consider the proposal and its implications.

9. Mr. PAREJO GONZALEZ (Colombia) supported the suggestion of the representative of the Philippines. His delegation had supported the amendment to article 4, paragraphs 6 and 7, proposed by the Chairman (E/CONF.82/C.1/L.29) and he believed that a number of delegations would be satisfied with such a compromise formulation. Most delegations seemed unable to approve the present text of paragraph 6.

10. Mr. RAIMONDI (Italy) said that his delegation approved the amendment to article 4, paragraph 6, submitted by the Chairman.

11. Mr. OUCHARIF (Morocco) said that he fully appreciated the United States delegation's aim of avoiding disagreement over extradition. However, such disagreement was inevitable since it sprang from the difference between the various legal systems. His delegation had supported the Chairman's amendment to article 4, paragraph 6, which was designed to achieve a compromise. The United States view appeared to be that, since it was unlikely that any compromise agreement could be reached on certain paragraphs of article 4, it was preferable to delete them.

12. Mr. AFFENTRANGER (Switzerland) said that he shared the concern of the representative of the Federal Republic of Germany. One of the objectives of the Conference was to endeavour to improve existing measures for dealing with traffic in narcotic drugs and psychotropic substances and, to that end, the Committee should continue its consideration of article 4, paragraphs 6 and 7.

13. Mr. RAO (India) supported the idea of setting up a working group to consider the United States proposal. Meanwhile, he wished to propose a number of amendments to article 4. In paragraph 1 the word "concerned" should be deleted; in paragraph 3 the word "shall" should be deleted; and in paragraph 5 the phrase in brackets should be retained. In paragraph 6 the words "constitutional limitations, legal system and" in the first sentence should be deleted and the square brackets removed. In the third sentence of the paragraph the words "domestic legal system" and "fundamental domestic law" should be deleted and the square brackets removed from the words "domestic law". In subparagraph 8(a) the first and fourth bracketed phrases should be deleted and the second, third and fifth bracketed phrases should be retained. In subparagraph 8(b) the words "the same" in the second line should be deleted.

14. He also proposed that a form of wording along the lines of article 2, paragraph 7, should be included in article 4. Lastly, he proposed that the words "domestic law" should be used uniformly throughout article 4 in place of the words "the constitution", "the domestic legal system" or "fundamental domestic law".

15. Mrs. OLIVEROS (Argentina) said that her delegation shared the concern voiced by the representative of the Federal Republic of Germany concerning the United States proposal. Time would be needed to consider it. She supported the proposal of the representative of the Philippines.

16. Mr. POPOV (Bulgaria) said that the amount of time the Committee had devoted to article 4 was an indication of the importance and complexity of the issue it addressed. He shared the views expressed by the representative of the Federal Republic of Germany regarding the United States proposal.

17. The Committee had already approved the first paragraph of the amendment to article 4, paragraph 6, submitted by the Chairman. That decision should not now be reversed. He was not sure that a working group could go very far in considering the United States proposal, since it would be unable to deal with matters of substance.

18. Mr. AL-OZAIR (Yemen) said that he supported any attempt to find a formulation that would facilitate the extradition of persons convicted of drug offences. There would be difficulties, but unless they were overcome the convention would be weakened.

19. Mrs. JONES (United Kingdom) said that her delegation supported the United States proposal. The discussion of article 4, paragraphs 3 and 6, at previous meetings had convinced her that countries unable to consider the convention as a legal basis for extradition would not be able to change their position. The same applied to those countries which were unable to extradite their own nationals. Accordingly, any proposal to retain the word "shall" in the various paragraphs of the article was an attempt to secure modification of national legal systems. It was obvious that such modification would not be achieved. In her view, a new draft of article 4 was required.

20. Mr. SUCHARIKUL (Thailand) supported the United States representative's proposal to delete paragraphs 6 and 7.
21. Mr. MADDEN (Jamaica) said that he supported much of the United States proposal. He agreed with the retention of the word "may" in paragraph 3; he had had difficulty with paragraph 6 from the outset, notwithstanding efforts made to improve it; and paragraph 7 would not, in his view, do much to alter the situation.

22. Mr. GONZALEZ FELIX (Mexico) said that one of the difficulties which arose in connection with article 4 was that the majority of States could not extradite their own nationals. The United States delegation's attempt to restructure article 4 would, he believed, enable the Committee to make progress.

23. Mr. AL-NOWAISER (Saudi Arabia) said that he was puzzled by the turn taken by the discussion. The Committee had so far been discussing article 4 paragraph by paragraph and had made some progress, in particular with regard to paragraph 6. But an entirely new situation had now arisen as a result of the United States proposal. It might well offer a solution to the problems facing the Committee, but a procedure for dealing with it had to be devised. He therefore appealed to the Chairman to inform the Committee how it should proceed and asked for the circulation in writing of the United States proposal.

24. Mr. SCHUTTE (Netherlands) welcomed the United States proposal as possibly leading to a consensus. He could accept the use of the word "may" in paragraph 3 and he welcomed the proposal to delete paragraphs 6 and 7. The issues referred to in those paragraphs should be dealt with in bilateral or multilateral agreements on extradition, and not in the text of a convention such as the present one. He was concerned at the idea of establishing for dealing with drug offences standards different from those applicable to other offences. Paragraph 13 might perhaps be made to refer, not only to the conclusion of bilateral and multilateral agreements, but also to the review of existing ones. He shared the United States representative's views concerning paragraph 8, but drew attention to the amendment submitted by Yemen (E/CONF.82/C.1/L.21), which the Committee should take into consideration. He would be reluctant to accept the complete elimination of paragraph 9.

25. Mr. KURAA (Egypt) said that he understood the Committee to have already approved the first part of the Yemeni amendment to paragraph 6 (E/CONF.82/C.1/L.21). It would be recalled that he had submitted a subamendment to that amendment, which might form the basis for a compromise solution to the problem of States which were constitutionally unable to extradite their own nationals.

26. Mr. KATHOLNIGG (Federal Republic of Germany) said that his delegation would like to participate in any working group to consider the United States proposal. However, representation in such a group, as well as in Committee I and Committee II, might present a problem.

27. Mrs. ROUCHEREAU (France) associated herself with the concern expressed by the previous speaker. In view of the vital importance of article 4, many representatives would no doubt wish to take part in the discussion of the United States proposal, which in effect called in question article 4 as a whole. Clearly some decision had to be taken on the procedure to be followed. However, she saw no reason not to continue its consideration paragraph by paragraph, particularly in view of the short time available. Article 4 was in fact not the only one that dealt with an important and complex issue. Particular difficulties arose in connection with its paragraphs 3 and 8, but the link with article 2 bis should not be overlooked.

28. Mr. ABBAD (Algeria) said that the United States proposal, which he wished to see in writing, might contribute to the development of a simpler and more effective text.

29. With regard to the procedure to be followed, he suggested that all the proposals relating to article 4 should be circulated as documents. A small working group could then consider the proposals and submit its conclusions to the Committee for examination paragraph by paragraph.

30. The CHAIRMAN, summing up the discussion, said that a majority of speakers had been in favour of continuing the consideration of article 4 paragraph by paragraph. There had also been general agreement that the United States proposal should be circulated in writing. A problem remained with regard to paragraph 8, where the amendment submitted by Yemen (E/CONF.82/C.1/L.21) and the Egyptian subamendment thereto were relevant to the United States proposal. He therefore wished to suggest the following procedure: before the next meeting, an informal group of interested representatives should attempt to produce a compromise text for article 4, paragraph 8, which would be circulated together with the text of the United States proposal. Depending on the outcome of the group's work, the Committee would then first discuss paragraph 8, after which it would consider, one by one, the outstanding paragraphs of the article.

31. He invited the Committee to approve the procedure he had outlined.

32. The procedure outlined by the Chairman was approved.

The meeting rose at 1.10 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 bis (E/CONF.82/C.1/L.22-24)

Paragraph 1(a)

1. The CHAIRMAN said that amendments to article 2 bis had been submitted by the delegations of Israel (E/CONF.82/C.1/L.24), the German Democratic Republic (E/CONF.82/C.1/L.22) and Denmark, Finland, Norway and Sweden (E/CONF.82/C.1/L.23).

2. Mrs. GOLAN (Israel), introducing her delegation’s amendment (E/CONF.82/C.1/L.24), said that one of the most effective tools in fighting the illicit traffic was the establishment of a State jurisdiction that was as broad as possible. The basic principle of jurisdiction was that a State was entitled to enforce its law throughout its own territory, which included not only its land, air space and territorial waters but also, through a legal fiction, ships and aircraft registered under its laws.

3. It had also become widely accepted that a State might extend its jurisdiction in order to be able to punish offences committed abroad by a national or by a person who had his habitual residence in its territory. Such jurisdiction had recently been embodied in the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and in her Government’s view it should also apply with regard to illicit traffic in drugs.

4. In order to fight particularly odious crimes, nations were tending towards broadening the concept of jurisdiction even further; thus a State would enforce its law against any offender, national or foreign, wherever the offence was committed, provided the offender was found in its territory. Such universal jurisdiction, which might prove a very useful tool in the war against drugs, had been established by Israel in article 38 of its Dangerous Drugs Ordinance (Consolidated Version), 1973, and her Government would view favourably the inclusion of similar provisions in the draft convention. The effect of its proposal would be that a Party would be obliged to prosecute offenders, nationals and foreigners alike, whenever their extradition was refused. That kind of jurisdiction already existed in article 36, paragraph 2(a)(iv), of the Single Convention on Narcotic Drugs, 1961, and in article 22, paragraph 2(a)(iv), of the Convention on Psychotropic Substances, 1971. It was imperative that it should exist in the present convention as well.

5. Israel also proposed the mandatory establishment of regular territorial jurisdiction, including jurisdiction over ships and aircraft registered under the laws of a State, and jurisdiction over nationals. It supported the inclusion in the convention of provision for optional limited and conditional jurisdiction over offences committed on board a vessel beyond the external limits of the territorial sea of any State and flying the flag of another Party. Although such jurisdiction was not specifically mentioned in article 108 of the 1982 United Nations Convention on the Law of the Sea, a provision which dealt with co-operation and the suppression of illicit traffic in narcotic drugs engaged in by ships on the high seas contrary to international conventions, its recognition in the present convention would only enhance co-operation in that regard and would not affect the régime of the high seas.

6. Mr. VICTOR (Sweden), introducing the amendment in document E/CONF.82/C.1/L.23 sponsored by Denmark, Finland, Norway and his own country—which he would refer to collectively as the Nordic countries—said that effective provisions on jurisdiction and extradition were essential for the convention. However, extradition was not always the most helpful tool in the fight against drug trafficking and it was unproductive to rely on national jurisdiction alone because offences were often committed in many different countries; it was therefore important to provide for wide jurisdiction to ensure that an offender could be sentenced. Extradition should only be used in the severest cases. It was a long process and it was often better to hand an investigation over to another country and request it to prosecute, particularly in cases where the sentence would be a short term of imprisonment or a fine.

7. The close co-operation which existed between the Nordic countries in criminal matters had proved very effective and it was possible for them to hand over cases for prosecution to almost all countries which recognized the principle of dual criminality. The proposal in document E/CONF.82/C.1/L.23 did not provide for co-operation as extensive as that between the Nordic countries themselves and did not differ very greatly from the basic text of article 2 bis in document E/CONF.82/3. The wording of subparagraphs (i) and (ii) of paragraph 1(a) was the same as in the basic text and should raise no problem. The Nordic countries had strengthened paragraph 1(b) by making it mandatory, but they had added a proviso concerning a Party’s constitutional limitations and the basic principles of its legal system. The Committee would see that the reference to a national or person with habitual residence fell within the scope of that proviso.

The point of that was to take account of the position of countries which wished the draft to contain some limitations in that respect because they believed that, for jurisdiction to operate in such cases, the offence had to be of a certain seriousness, an idea which it was hard to express in wording appropriate for an international convention. The content of paragraph 2 of the basic version was
contained in paragraph 1(b)(iv) of the Nordic countries' proposal. The sponsors' intention was that the proposal should be linked with article 4, paragraph 8, which provided that the Party in whose territory the alleged offender was present should submit the case to its competent authorities if it did not extradite him.

8. Mr. DUFT (German Democratic Republic) introduced his delegation's amendment (E/CONF.82/C.1/L.22) to paragraph 1(a)(ii). Article 91 of the United Nations Convention on the Law of the Sea stated that the nationality of a ship was that of the State whose flag it was entitled to fly, but it might be registered in another State. The national regulations of his country provided that a ship registered in the German Democratic Republic for up to a year could fly the flag of another State, so that flying the flag ought to be the relevant criterion in the matter of jurisdiction. That view was in conformity with the decision taken by the Legal Committee of the International Maritime Organization at its fifty-ninth session in April 1988.

9. The CHAIRMAN invited the Committee to take a decision on the introductory wording of the article, which in the amendments proposed by Israel and the Nordic countries did not differ greatly from the basic text. However, the Israeli proposal added the notion of exercise of jurisdiction.

10. He took it that the Committee did not object to providing in paragraph 1(a)(i) for the obligation of a Party to take measures for the establishment of jurisdiction when the offence was committed in its territory.

11. He inquired whether there were any objections to so providing in paragraph 1(a)(ii) when the offence was committed on board a ship or aircraft.

12. Mr. SCHUTTE (Netherlands) supported the proposal by the German Democratic Republic.

13. Mr. LAVIÑA (Philippines) also supported that proposal. He considered that the introductory wording should read: "to establish and exercise its jurisdiction".

14. Mr. MADDEN (Jamaica) supported the proposal by the German Democratic Republic but suggested amending the words "a ship flying its flag" to "a ship entitled to fly its flag", which would be in accordance with the wording of article 91 of the United Nations Convention on the Law of the Sea.

15. Ms. HUSSEIN (Malaysia) said that her delegation had no objection to the proposal by the German Democratic Republic but thought that the word "vessel" should be used instead of "ship" in order to keep the wording of draft article 2 bis in line with that of draft article 12.

16. Mr. BAEYENS (France) said that his delegation supported the amendment proposed by the German Democratic Republic. However, it did not favour the reopening of the discussion on the article as a whole since the basic text in document E/CONF.82/3 had been the result of lengthy negotiations. Accordingly, it opposed the amendments proposed by the Nordic countries and Israel.

17. Mr. OUCHARIF (Morocco) said that since it was generally understood that the notion of territory extended to a State's ships and aircraft, acceptance of the amendment proposed by the German Democratic Republic would merely introduce confusion.

18. Mr. RAIMONDI (Italy) supported the amendment proposed by the German Democratic Republic.

19. Mrs. VEVIA (Spain) also supported it and agreed that the terminology of article 2 bis should be aligned with that of article 12. The generic term "navy" should be used in Spanish to translate the English terms "ship" or "vessel", whichever was selected.

20. The CHAIRMAN suggested that the exact terminology might be left to the Drafting Committee.

21. Mr. KATHOLNIGG (Federal Republic of Germany) agreed that the terminology of article 2 bis should be aligned with that of article 12 and that the exact wording might be left to the Drafting Committee.

22. Mr. AL-NOWAISER (Saudi Arabia) supported the proposal made by the German Democratic Republic and agreed on the need to align the wording of article 2 bis with that of article 12.

23. Mr. BOBIASZ (Canada) said that his delegation preferred the original wording of article 2 bis. The phrase "a ship or aircraft registered under its laws" would allow countries wishing to base nationality on an entitlement to fly their flag to do so. The need for consistency between article 2 bis and article 12 did not seem compelling in view of the possibility that a ship might fly a flag to which it was not entitled. In that case the actual flag being flown should be sufficient to bring into play the powers contemplated under article 2. He agreed with the Jamaican proposal.

24. Mr. BRUCE (Ghana) said that in his view the Committee should approve the text of subparagraph (a)(ii) proposed in document E/CONF.82/3.

25. Mr. POPOV (Bulgaria) said that the proposal of the German Democratic Republic should be accepted, since the expression "flying the flag" was indisputably the one used in many international instruments.

26. Mr. MADDEN (Jamaica) asked where jurisdiction would lie in the case of an offence committed on board a ship entitled to fly the flag of one State but, for reasons of its own—perhaps illicit ones—flying the flag of another State.

27. Mr. LAVIÑA (Philippines) said that he believed that issue was irrelevant to the discussion.

28. Mr. RAIMONDI (Italy) observed that article 6 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, employed the formulation used in the amendment by the German Democratic Republic.
29. The CHAIRMAN said he took it that there was a consensus in favour of the amendment submitted by the German Democratic Republic, and that the Committee wished article 2 bis, paragraph 1(a)(ii) to be worded accordingly.

30. It was so agreed.

31. The CHAIRMAN said that the Committee had agreed on two cases of commission of an offence, mentioned by him earlier, in which each Party would have an obligation to establish its jurisdiction. He called for views concerning the formulation, in the introductory wording of article 2 bis, of the obligation to exercise jurisdiction.

32. Mr. KATHOLNIGG (Federal Republic of Germany) said he considered that, for the purposes of the provisions under consideration, it was the obligation to establish jurisdiction which was of supreme importance. He understood the thrust of the three proposals for article 2 bis to be directed towards States which had not so far established the jurisdiction in question. Looking at the article in that light, he was not totally opposed to the inclusion of a reference to the exercise of jurisdiction in the introductory wording.

33. Mr. XU Hong (China) observed that the establishment of jurisdiction was a precondition for its exercise, which itself was subject to various other factors. Countries might indeed fulfil the obligation of establishing jurisdiction over the offences listed in article 2, paragraph 1, but there could be occasions when they did not actually exercise it; for example, where parallel jurisdictions existed in their relations with other countries. He could agree to an allusion to the possibility of exercising jurisdiction in the introductory wording, if the Committee found that necessary, but he believed that the whole issue of exercise was best considered under article 4.

34. Mr. OUCHARIF (Morocco) said that the establishment of jurisdiction was only the first of many stages in the administration of justice, which included exercise, execution and other acts performed in accordance with domestic legislation. He opposed the inclusion of a reference to the exercise of jurisdiction in the introductory wording.

35. Mr. AL-NOWAISER (Saudi Arabia) said that the establishment of jurisdiction was the pre-eminent factor to consider. He suggested the deletion of the word "exercise" and the square brackets round it, as well as the square brackets round the word "establish", from the introductory wording of paragraph 1(a) as proposed in document E/CONF.82/3.

36. Mr. LAVIÑA (Philippines) recalled the lengthy discussion which had taken place in the Review Group concerning the use of the expressions "establish jurisdiction" and "exercise jurisdiction". It seemed obvious to him that when an offence was committed in the territory of a State, on board a ship flying the flag of a State, or in an aircraft which was registered under the laws of a State, that State had jurisdiction. It therefore seemed superfluous for the draft to emphasize the obligation to establish jurisdiction in such cases. However, he understood the thrust of the article to be to oblige States first to establish the offences listed in article 2, paragraph 1, as offences under their domestic legislation and then—as logic demanded—to exercise their jurisdiction over those offences. His delegation would agree to the inclusion of both notions, establishment and exercise, in the introductory wording, but not to the mention of establishment alone.

37. Mr. POPOV (Bulgaria) said that the fundamental issue was the establishment of jurisdiction, the consequences of which were exercise and a number of other acts. He would strongly recommend that the introductory wording should refer to establishment alone.

38. Mr. ASSADI (Islamic Republic of Iran), supported by Mr. AL-SHARARDA (Jordan), Mr. RAMESH (India), Mr. BAESYENS (France) and Mr. BRUCE (Ghana), said that the introductory wording should simply refer to the establishment of jurisdiction. That would be in accordance with similar formulations in other international instruments.

39. Mr. VALL (Mauritania) said that he too had initially taken that view because of what he considered to be an excessively authoritative tone in the formulation "Each Party . . . shall . . . exercise its jurisdiction", contemplated in the text in document E/CONF.82/3. However, the statement by the representative of the Philippines led him to propose the following formulation: "Each Party shall establish and where appropriate exercise its jurisdiction . . . ."

40. Mr. ALLAGUI (Tunisia) favoured a reference solely to the establishment of jurisdiction, as proposed in the amendment by the Nordic countries.

41. The CHAIRMAN said that a majority of the Committee seemed to hold the view that the introductory wording should refer solely to establishment. He thought the idea expressed in the formulation suggested by the representative of Mauritania might be covered by the power to exercise jurisdiction which each State attributed to itself on the basis of its domestic law. He asked the Committee if it agreed in principle that what was at present paragraph 1(a) of article 2 bis of the original draft should read:

"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;"

42. It was so agreed.

43. Mr. LAVIÑA (Philippines) said that, although he had not opposed it formally, his delegation had the strongest reservations concerning the agreement just reached.
44. Mr. VALL (Mauritania) said that one of the purposes of his proposal regarding the exercise of jurisdiction had been to cater for situations in which, once the jurisdiction of the flag State or State of registry had in principle been established over offences committed on ships or in aircraft, that State might exercise its jurisdiction at its own discretion.

Paragraph 1(b) (E/CONF.82/C.1/L.23, L.24)

45. The CHAIRMAN said that the text in document E/CONF.82/3 presented as optional the action called for in the circumstances described in subparagraph (b)(i); the Nordic countries' proposal would make it mandatory, but subject to a safeguard; and the proposal by Israel (E/CONF.82/C.1/L.24) would make it mandatory unconditionally.

46. Mr. KATHOLNIGG (Federal Republic of Germany) favoured the amendment submitted by Israel. If it was not accepted, he would transfer his support to the version proposed by the Nordic countries for subparagraph (b)(i), because he considered its introductory wording to be more appropriate than what was in document E/CONF.82/3.

47. Mr. de la GUARDIA (Argentina) favoured the text in document E/CONF.82/3 as it would read with the removal of the brackets surrounding the final clause of subparagraph (b)(i). In his delegation's view, jurisdiction must have a territorial basis. As to whether the provision should be optional or mandatory, he would prefer the unconditional version proposed by Israel. If, however, the Committee wished the provision to be mandatory but subject to a safeguard, he would transfer his support to the Nordic countries' proposal. He sympathized with that desire, not because a safeguard was necessary as far as his own country's legislation was concerned, but because there were countries for which it was.

48. Mr. OUCHARIF (Morocco) said that the formulation in the Nordic countries' proposal, with its safeguard clause, corresponded best to the legal situation in his country as far as the possibility of bringing to justice nationals or persons who had habitual residence in its territory was concerned.

49. Mr. SCHUTTE (Netherlands) said he believed that the words in subparagraph (b)(i) which were in square brackets in document E/CONF.82/3 had been proposed by the Review Group in connection with the element of exercise of jurisdiction. Since that element had been discarded in paragraph 1(a) of the article, there seemed to be no grounds for retaining those words.

50. Reading the provisions of paragraph 1(b)(i) might give the impression that they were somewhat weak; placing them in conjunction with paragraph 2(a)(ii) corrected that impression. The Netherlands understood the position of countries whose legal systems were based strictly on the principle of territorial jurisdiction in criminal matters; it would certainly be difficult for them to establish extraterritorial jurisdiction where, for example, offences by their own nationals were concerned. It might be wrong to encourage those countries to establish—and accordingly exercise—such jurisdiction, since they would run into difficulties in seeking to secure convictions for offences committed abroad in a country whose procedure and rules of evidence were completely different from their own; moreover, if an acquittal resulted, it would produce a double-jeopardy bar to a further prosecution of the acquitted defendant. That being so, it would be far preferable to leave the matter to the territorially competent State, which could exercise its jurisdiction after securing extradition.

51. His delegation therefore believed that the Review Group had been wise to make the requirement to establish extraterritorial jurisdiction optional in the case of nationals in paragraph 1, while creating in paragraph 2 an obligation to establish it for non-extraditable nationals.

52. Mr. LAVIÑA (Philippines) said he found the provisions of paragraph 1(b)(i) dangerous, in that they conflicted with the general practice and fundamental legal systems of most States, which were based on the notion of territoriality of criminal jurisdiction. Few countries had extraterritorial jurisdiction; few—except perhaps in the case of conspiracy—held criminal trials in absentia. It was consequently difficult for his delegation to agree to paragraph 1(b)(i), even with the inclusion of the qualifying clause in brackets. In the view of the Philippines, a State could have no jurisdiction over a crime that was not committed in its territory.

53. Mrs. KATHREIN (Austria) favoured the wording of paragraph 1(b)(i) proposed in document E/CONF.82/3, with the words in brackets at the end of sub-subparagraph (i) deleted. She added that as far as her country was concerned, there was no need for a safeguard in respect of nationals; a safeguard would, however, be required in connection with jurisdiction relating to habitual residents, which was innovatory; her country had little experience in that area and regarded such residents as aliens.

54. Ms. HUSSEIN (Malaysia) expressed the view that the words in brackets in paragraph 1(b)(i) would not preclude the operation of extraterritorial jurisdiction; they simply laid stress on the presence of the offender. She asked whether they covered the notion of extended territoriality, as in paragraph 2(a)(ii). If they were meant to cover cases where the offence was committed in the territory of the State concerned, that should be stated clearly and the provision should be mandatory. If, however, they embraced extraterritorial jurisdiction as well, her delegation would favour a safeguard clause of the kind proposed by the Nordic countries.

55. Mr. AL-NOWAI SER (Saudi Arabia) recalled that the Review Group had reached almost complete agreement on the matter under consideration. Consequently, he favoured the text proposed in document E/CONF.82/3, but suggested that it should be amended by the incorporation of the proviso suggested by the Nordic countries, so that it would read:

"1. Each Party

(b) may, subject to its constitutional limitations and the basic principles of its legal system, take such measures as may be necessary ..."
56. Mr. ALLAGUI (Tunisia) said that his delegation fully approved the safeguard wording in the amendment submitted by Denmark, Finland, Norway and Sweden.

57. Mr. BOBIASZ (Canada) said that his delegation favoured the basic text and would prefer it without the words in brackets.

58. Mr. MADSEN (Jamaica) said that, in regard to the introductory wording of paragraph (b), his delegation could approve either the optional formulation proposed in the basic text or the safeguard wording suggested by the Nordic countries. He thought that subparagraph (b)(i) of the basic text should be worded more clearly. Subparagraph (a)(i) referred to offenses committed in the Party's territory; subparagraph (b)(i) should therefore refer to offenses committed outside its territory, and might be worded: "the offence, wherever committed, is committed by a national". His delegation favoured the deletion of the words in square brackets at the end of subparagraph (b)(i).

59. Jamaica had tended to exercise jurisdiction over nationals very sparingly when the offence was committed outside its territory and had not exercised it in such cases with respect to persons who were habitual residents in Jamaica. Consequently, it would not be able to go further than an optional provision or one with a safeguard clause with regard to the latter category of persons. It felt that, just because a country had established jurisdiction, it should not feel obliged to exercise it in cases where an assessment of the facts indicated that a prosecution was doomed to failure or, constitutionally, might preclude a further prosecution. There was also the international aspect of the double-jeopardy rule to consider.

60. The CHAIRMAN said that, whatever the Committee decided with regard to jurisdiction based on nationality or residence, the convention should not permit derogation from the obligation to establish jurisdiction with regard to offenses of the specified kind committed within national territory, whether the offender was a national or a foreigner.

61. Mr. XU Hong (China) said that his delegation believed that subparagraph (b)(i) should be incorporated in subparagraph (a)(i), in order to oblige States to establish the jurisdiction in question. However, since other countries could not accept such an obligation because of their domestic law, China would agree to the matter being dealt with in the manner contemplated in subparagraph (b).

62. The wording in square brackets in subparagraph (b)(i) should be deleted because some countries' domestic law would conflict with it, but they should nevertheless be able to accept the subparagraph if the introductory wording to it provided some degree of latitude. His delegation favoured the introductory wording proposed by the Nordic countries.

63. Mr. OSHIKIRI (Japan) said his delegation felt that the obligation set out in the amendment submitted by the Nordic countries was a logical requirement, but he had some doubt whether paragraph 1(b) was necessary in view of paragraph 2. With regard to the basic text, his delegation was of the opinion that the words in brackets in subparagraph (b)(i) should be deleted. The introductory wording should allow the establishment of jurisdiction to be discretionary. The relationship of the offender and the country to which he belonged or in which he had his habitual residence did not provide a justifiable basis for extraterritorial jurisdiction. In practice, his delegation did not see much point in recognizing jurisdiction on the basis of nationality or habitual residence. The matter should be examined in relation to extradition.

64. Mr. BAЕYENS (France) said that each of the three subdivisions of subparagraph (b) embodied provisions unknown to French law and, no doubt, the law of other countries; one example of that was the establishment of jurisdiction over a person who had his habitual residence in the territory. The notion of preparatory act mentioned in subparagraph (b)(iii) was not to be found in French law either. He felt it was dangerous for the draft to place too much stress on the type of offence mentioned in subparagraph (b)(ii). That provision embodied a new idea whose implications had yet to be assessed. His delegation therefore believed that the introductory wording of subparagraph (b) should lay down an optional provision, along the lines of the text in document E/CONF.82/3. Consequently, his delegation did not accept in their entirety the amendments submitted by the Nordic countries and Israel.

65. Mrs. VEVIA (Spain) said that her delegation largely shared the views expressed by the delegations of Argentina and the Netherlands. For Spain, the principle of extraterritoriality posed no problem, while the principle of universal jurisdiction with regard to drug-related offences was enshrined in Spanish legislation. However, considering the problems alluded to by other countries, her delegation thought that the Committee should approve either the optional formulation of the basic text or the safeguard wording in subparagraph (b) of the Nordic countries' proposal.

66. Mr. RAMESH (India), referring to subparagraph (b)(i), said that his country's view was that jurisdiction extended to all nationals, whether or not they were in the country, if they had committed an offence. It also covered any other person who had committed an offence in the territory of the country. His delegation would therefore prefer subparagraph (b)(i) to become subparagraph (a)(i) and to read "the offence is committed by a national, or by a person in its territory."

67. With regard to subparagraph (b)(ii), his delegation said that, since the final form of article 12 was uncertain, it was premature to discuss the subparagraph at present. Article 2, paragraph 1, had not been finalized either and therefore the discussion of subparagraph (b)(iii) should also be deferred.

68. With regard to the amendment submitted by Denmark, Finland, Norway and Sweden, his delegation felt that the text of subparagraph (b)(iv) was superfluous and should be deleted.

69. Mr. STEWART (United States of America) expressed his delegation's support for the text proposed in
the basic document with regard to the issue of jurisdiction over offences committed by nationals. It should be a voluntary provision, not a mandatory one. The text in brackets at the end of subparagraph (b)(i) should be deleted.

70. Mrs. JONES (United Kingdom) said that her delegation favoured the wording proposed in the basic text and considered that the words in square brackets in subparagraph (b)(i) should be deleted. Jurisdiction over nationals should remain optional; the constitutional safeguard was not sufficient.

71. Mr. SUCHARIKUL (Thailand), referring to subparagraph (b)(i), said that his country's criminal law allowed nationals who committed offences abroad to be punished in certain cases. However, that was not so, and could not be so, in the case of a person who had his habitual residence in Thailand. His delegation therefore favoured the non-mandatory language of the Nordic countries' proposal. In other respects it could accept the text set out in the basic document, apart from the words in square brackets at the end of subparagraph (b)(i), which it considered unnecessary.

72. Mr. VALL (Mauritania) said that it was important that the convention should give Parties the freedom to take account of their constitutional limitations and fundamental law.

73. Mr. GONZALEZ FELIX (Mexico) welcomed the remarks made by the representative of France with regard to subparagraph 1(b). Habitual residence was a notion unknown in Mexico too. His delegation therefore favoured the basic text in document E/CONF.82/3, with the words in square brackets deleted.

74. The CHAIRMAN said that the Committee had clearly indicated that it did not want the convention to contain a jurisdiction obligation based on nationality or residence unaccompanied by safeguard wording. There seemed to be a majority in favour of the optional formulation of the introductory wording which used the word may, as well as the deletion of the words in brackets in subparagraph (b)(i) of the basic text.

75. He therefore proposed the following text:

"(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.".

76. Mr. KATHOLNIGG (Federal Republic of Germany) said it was important to bear in mind the links between the various parts of article 2 bis. He stressed that paragraph 1(b)(i) had to be read in conjunction with paragraph 2(a)(ii), on which a decision had not yet been reached. He therefore reserved his position on the wording proposed by the Chairman for paragraph 1(b)(i), pending discussion of the subsequent sections of the article.

77. The CHAIRMAN noted the reservation expressed by the Federal Republic of Germany. He asked the Committee if it approved the text he had just proposed.

78. It was so decided.

79. The CHAIRMAN said that delegations had pointed out that paragraph 1(b)(ii) was closely related to article 12 and that it would be inappropriate to deal with it at the moment. That raised the problem of the functional relationship between the work of Committee I and that of Committee II, a problem he was confident could be solved. He proposed postponement of the consideration of paragraph 1(b)(ii).

80. It was so decided.

81. Mr. LAVINA (Philippines) said that his delegation was opposed to the provision contemplated in subparagraph (b)(i). It embodied a principle repugnant to the legal systems of some States, akin to the fact that most States could not approve the principle of the extradition of nationals by their own country. To legislate jurisdiction based on nationality, residence or mere presence was simply unconstitutional and was tantamount to establishing a principle of trial in absentia or extraterritoriality. Moreover, in most instances, it would amount to an empty gesture.

82. The CHAIRMAN said that paragraph 1(b)(iii) was an amendment to a provision in the Single Convention on Narcotic Drugs, 1961 dealing with connected offences committed in different territories.

83. Mr. FOFANA (Senegal) stressed the need for the optional formulation of subparagraph (b). His delegation saw a possible danger in part of the terminology used in subparagraph (b)(iii). The Senegal penal code, which was subject to strict interpretation, did not consider a preparatory act to be an offence. According to his reading of the subparagraph, what was meant was either a connected offence, or a constituent element of an offence, committed abroad. His delegation asked for clarification of that point.

84. The CHAIRMAN said that the open-ended intergovernmental expert committee had originally considered a text worded along the lines of article 36, paragraph 2(a)(i), of the Single Convention. That provision was designed to afford the possibility of establishing jurisdiction to a country in which an offence was considered to be related to a previous separate offence committed in another country and held to be a preparatory offence.

85. Mr. LAVINA (Philippines) said that in most jurisdictions preparatory acts were not criminal. The intention to commit a crime could not be punished unless the criminal act was perpetrated.

The meeting rose at 6 p.m.
CONSIDERATION OF THE DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 bis (continued) (E/CONF.82/C.1/L.22, L.23 and L.24)

Article 4 (continued)

Paragraph 8 (continued) (E/CONF.82/C.1/L.30)

1. Mr. FOFANA (Senegal) said that article 2 bis, paragraph 1(b)(iii), was an undesirable provision. His delegation objected in particular to the use of the words “as a preparatory act”. A preparatory act was not a criminal offence, at least in Senegal. It could come under the purview of criminal law only as part of an attempt to commit a crime. A provision on the subject of a preparatory act relating to an offence committed in a different country had no place in the convention.

2. Mr. OUCHARIF (Morocco) agreed with the previous speaker. He failed to see what could be meant by a “preparatory act”. Such acts were not in themselves punishable under the criminal law of his country. Participation in a crime constituted a criminal offence. He accordingly suggested the deletion of the words “as a preparatory act”.

3. Mr. SCHUTTE (Netherlands) supported the proposal to delete the words between square brackets, which obviously were leading to confusion. Paragraph 1(b)(iii) was limited in scope. It was intended to refer to conspiracy, participation and aiding and abetting the offences covered by the convention. Under the law of the majority of States, acts of that nature were deemed a main offence and were treated as such by criminal law.

4. Such acts could take place in a country other than the one in which the offence was committed. In those circumstances the provision in paragraph 1(b)(iii) added nothing to what was already stated in paragraph 1(a)(i). There was, however, a group of States whose criminal law recognized the acts in question as individual acts committed at the place of perpetration. For jurisdictional purposes those States treated the act of participation as a main offence occurring in a different place. The provision in paragraph 1(b)(iii) would, it was hoped, persuade those States to establish jurisdiction when the acts in question were committed outside their territory by an individual who was not their national. Though the provision was of limited importance it would thus be of help to some States. His own country had established that type of jurisdiction for drug offences. Paragraph 1(b)(iii) could induce it to do the same for laundering offences.

The provision would thus be moderately useful to his country.

5. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee agreed to delete the words “as a preparatory act” in article 2 bis, paragraph 1(b)(iii).

6. It was so decided.

7. Mr. RAMESH (India) said that paragraph 1(b)(iii) presented no difficulty for his delegation. Under Indian law, criminal jurisdiction was related to nationality regardless of the place of commission of the offence. The offences referred to in the paragraph were recognized as serious offences attracting a level of punishment similar to that for the main offence.

8. Mr. YAHIAOUI (Algeria) found the drafting of paragraph 1(b)(iii) ambiguous and proposed the following rewording:

"the offence is one of those listed in article 2, paragraph 1, subparagraphs (a) and (b)(i) and (ii), one element of which, constituting an offence, is committed within its territory."

9. Mr. AREONA (United States of America) stressed the purely permissive character of the provision under consideration. Its impact would merely be to encourage States to recognize jurisdiction in the situations mentioned. A criminal undertaking could be set in motion in one State but have its consequences in another. The purpose of the provision was to encourage the latter State to criminalize that activity.

10. Mr. FOFANA (Senegal) supported the rewording proposed by Algeria.

11. Mr. SHING (Mauritius) said that, in his view, paragraph 1(b)(iii) would have no application at all. All the offences envisaged in it were already covered by article 2, paragraphs 1(b)(i) and (iii). As acts of complicity or as acts constituting an offence they fell under one or other of those provisions. Since paragraph 1(b)(iii) was superfluous, he proposed its deletion.

12. Mr. BOBIASZ (Canada) supported the retention of paragraph 1(b)(iii), subject to the deletion of the words in square brackets.

13. Mr. BRUCE (Ghana) said that paragraph 1(b)(iii) was a very important provision. It was essential not to wait for a trafficker to complete his activity. If any evidence existed of preparatory acts, it should be possible to thwart his criminal plans.
14. Mr. OSHIKIRI (Japan) said that, because paragraph 1(b)(iii) was an optional provision he could accept it. So far as the wording was concerned, he suggested replacing the concluding words "of an offence set forth in article 2, paragraph 1" by a formula taken from paragraph 1, namely: "an offence established in accordance with article 2, paragraph 1". That language would avoid any misunderstanding.

15. Mr. KATHOLNIGG (Federal Republic of Germany) supported paragraph 1(b)(iii), which he believed would play a useful role. The provision, being optional, could not do any harm.

16. Mrs. ROUCHEREAU (France) said that if paragraph 1(b)(iii) was retained, she could approve it only on the understanding that it was optional in nature.

17. Mr. AL-MUBARAKI (Kuwait) also supported the retention of paragraph 1(b)(iii).

18. Mrs. KATHREIN (Austria) said that she could have agreed to the deletion of the paragraph but would not object to its being retained, in view of its optional character.

19. Mr. AFFENTRANGER (Switzerland) said that following the deletion from the paragraph of the words "as a preparatory act", it was his understanding that any State wishing to take action would still do so pursuant to article 2 bis, paragraph 3.

20. Mr. AL-ALSHEIKH (Saudi Arabia) supported the paragraph under discussion as a useful optional clause.

21. The CHAIRMAN appealed to those who had expressed doubts regarding article 2 bis, paragraph 1(b)(iii), to take into account its optional character, indicated by the introductory words: "Each Party may take such measures as may be necessary...". No State would be obliged to establish jurisdiction in the cases mentioned. It was worth noting that the corresponding provision in the amendment by Denmark, Finland, Norway and Sweden (E/CONF.82/C.1/L.23) did impose an obligation, but subject to the safeguard clause in paragraph 1(b): "subject to its constitutional limitations and the basic principles of its legal system".

22. In the absence of objection, he would take it that the Committee approved article 2 bis, paragraph 1(b)(iii), as amended.

23. It was so decided.

24. The CHAIRMAN invited the Committee to consider the United States amendment to article 4, paragraph 8 (E/CONF.82/C.1/L.30), which called for the deletion of paragraphs 6, 7 and 9 of the article. He noted that, like article 2 bis, paragraph 2, the United States proposal reflected the principle aut dedere aut judicare.

25. In view of the connection between the United States amendment to article 4, paragraph 8, and the provisions of article 2 bis, paragraph 2, it would be appropriate to consider the two texts in conjunction. He noted that the redraft of article 2 bis proposed by Denmark, Finland, Norway and Sweden (E/CONF.82/C.1/L.23) would create an obligation to establish jurisdiction, but subject to the safeguard relating to constitutional limitations and the basic principles of the legal system of the country concerned, while the redraft of article 2 bis proposed by Israel (E/CONF.82/C.1/L.24) would create a similar obligation, but without the safeguard.

26. Mr. STEWART (United States of America), introducing his delegation's amendment to article 4, paragraph 8 (E/CONF.82/C.1/L.30), explained that the obligation which it imposed on the requested Party to "submit the case without undue delay to its competent authorities for the purpose of prosecution" would exist only where the refusal to extradite was based "on the grounds set forth in paragraph 2(a) of article 2 bis", and specifically where the offence had been committed by a national or by a habitual resident of the territory of the requested Party. The legal obligation to take action was, moreover, conditional upon a request being made by the requesting Party. The former Party always had the right to prosecute under its own laws, even in the absence of a request.

27. His delegation's amendment, which was partly the result of consultations with other delegations, would simplify the text of article 4. It would prove useful in certain specific circumstances to trigger international legal action in order to bring about prosecution.

28. The amendment related to procedure. When a Party refused extradition on the grounds he had referred to, it would be under an obligation to submit the matter to the competent prosecuting authorities. He stressed that there would be an obligation, not to prosecute, but simply to submit the matter to the competent authorities.

29. The CHAIRMAN invited the Committee to consider article 2 bis, paragraph 3, a provision whose substance was also contained in the opening words of the United States amendment (E/CONF.82/C.1/L.30) and in the amendment of the Nordic countries (E/CONF.82/C.1/L.23) and that of Israel (E/CONF.82/C.1/L.24).

30. Mr. WELLS (Australia) expressed support for paragraph 3 in the text of the draft convention, which was similar to the corresponding provisions in several important international conventions on criminal law, such as the 1984 Convention against Torture, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts Against Civil Aviation and, in particular, the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances.

31. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved article 2 bis, paragraph 3.

32. It was so decided.

33. Mr. KATHOLNIGG (Federal Republic of Germany) said that the condition "if requested by the Requesting
Party” in the United States amendment to article 4, paragraph 8, appeared superfluous. He failed to see the reason for its inclusion.

34. He also failed to see why the United States amendment used the formula “when a Party declines to extradite” instead of the shorter formula “does not extradite”, which was to be found in article 2 bis, paragraph 2(a). There was also a difference of substance between the two wordings.

35. Mr. FOFANA (Senegal), supported by Mr. AL-ÖZAIR (Yemen), said that the difference in language between the two texts called for clarification.

36. Mr. VALL (Mauritania) also saw a need for clarification. Furthermore, the Arabic version of the United States amendment should be re-examined; the rendering of the expression “undue delay”, in particular, was unsuitable.

37. Mr. TEWARI (India) considered the first part of the United States amendment, as far as the words “article 2 bis”, superfluous: if a requested Party declined to extradite a person on the grounds set forth in article 2 bis, paragraph 2(a), the question of the requesting Party exercising any jurisdiction might well not arise. He would like to know why the phrase “if it does not extradite him and if the offence is one in respect of which that Party has jurisdiction”, to be found in the draft convention text of article 4, paragraph 8(a), had been omitted from the United States amendment.

38. Mr. YAHIAOUI (Algeria) said that the requirement in the United States amendment for submission of the case without undue delay to competent authorities for the purpose of prosecution constituted an attack on national sovereignty and might even run counter to domestic legislation. The decision to prosecute was a matter for the public prosecutor’s office or analogous body within the domestic legal systems. He therefore proposed that the obligatory force of the word “shall” should be weakened.

39. Mr. LAVIÑA (Philippines) said that he could accept the text proposed in the United States amendment, but he had some difficulty with the substance of article 2 bis, paragraph 2(a)(ii), to which the amendment referred.

40. Mr. LOW MURTRA (Colombia) expressed agreement with the representative of the Philippines. The United States amendment was more suited to the accusatorial than to the inquisitorial system of criminal justice, and the phrase “for the purpose of prosecution” should therefore be deleted. The limiting provision in the phrase “on the grounds set forth in paragraph 2(a) of article 2 bis” should, for reasons of procedural logic, be replaced by a reference to a formal writ of indictment from the requesting Party. In other words, a judgement against the accused must exist. Such a procedure would be applicable in all cases of extradition.

41. Mr. de la GUARDIA (Argentina), supported by Mr. GUNAY (Turkey), said that the United States amendment was an improvement on the text in document E/CONF.82/3 and the obligation implicit in the use of the word “shall” caused him no concern. It was not for Parties to perform extraditions, it was for their courts. However, the phrase “if requested by the requesting Party” was unnecessary; he recalled that article 10, paragraph 1, of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation obliged the State Party in the territory of which the offender or alleged offender was found, if it did not extradite him, to submit the case without delay to its competent authorities for the purpose of prosecution, without exception whatsoever and whether or not the offence had been committed in its territory. Neither paragraph 8 of the draft convention nor the United States amendment was as forceful. They should in his view be strengthened.

42. Mr. AL-NOWAISER (Saudi Arabia), referring to the United States amendment (E/CONF.82/C.1/L.30), proposed that the words “with article 2 bis or” in the second line should be deleted, that the words “without undue delay” in the penultimate line should also be deleted and that the word “considering” should be inserted before the word “prosecution” in the last line. The legal meaning of the word “person” in the third line was unclear and he requested clarification.

43. Mrs. PONROY (France) said that while she agreed with the substance of both article 4, paragraph 8(a), of the draft convention and the United States amendment, she favoured replacement of the phrase “declines to extradite” in the latter text by the phrase “does not extradite” used in the former. That formula was also used in other international instruments. The notion that submission of the case to the competent authorities should be subordinated to a request from the requesting Party was an unwelcome and unnecessary innovation which some would find offensive. Strict parallelism must be maintained between the provisions of article 4, paragraph 8(a), and article 2 bis, paragraph 2(a): an obligation to observe the principle aut dedere aut judicare must be balanced by an equal obligation to establish jurisdiction, and both obligations must be strict.

44. Mr. GUNAY (Turkey) proposed that the word “undue” should be deleted from the phrase “without undue delay”.

45. Mr. SCHUTTE (Netherlands) said that he agreed with the spirit and substance of the United States amendment, but would like to see the word “established” inserted before the words “in accordance with article 2 bis”. The amendment should also be made to refer to jurisdiction established in accordance with paragraph 1 of article 2 bis, or with the Party’s domestic law. The phrase “on the grounds set forth in paragraph 2(a) of article 2 bis” should be altered to read “on the grounds set forth in paragraph 2 of article 2 bis”, as the structure of article 4, paragraph 8, would thereby be made clearer.

46. The Netherlands could accept as reasons for refusing to extradite the grounds set forth in article 2 bis, paragraph 2(a)(i) (territoriality) and paragraph 2(a)(ii) (nationality or habitual residence), but would be unable to accept any obligation to establish any other extraterritorial jurisdiction.
47. His delegation opposed, for practical reasons, any automatic obligation on a Party which refused to extradite a person to submit the case without undue delay to its competent authorities. International drug trafficking was unlike terrorism or hijacking in that the requested Party might decline to extradite a person and also wish not to submit the case without undue delay to its competent authorities because it wished to track down the whole organization of which that person formed a part. A requirement to submit the case to the competent authorities would end the person’s usefulness to any investigation.

48. A number of options were available to the requesting Party; under certain legal systems, the person could be tried in absentia; the requesting Party could wait for the person to be found on the territory of a Party from which extradition could be obtained, or might even wait for him to return to its territory. Should the person already have been tried and, possibly, acquitted, a double jeopardy bar might arise to spoil the requesting country’s case. It was only sensible criminal justice policy to make any international obligation subject to international agreement as to which Party was the most appropriate to try a specific case. He observed also that the documents provided to support such a prosecution might not necessarily meet the requirements of the requested Party, having perhaps been drawn up in a foreign language or in accordance with a different legal system. The requesting Party might also be unable or unwilling to provide all the supporting evidence needed for the holding of a proper trial.

49. He noted that States which supported article 4, paragraph 7, on the minimizing of procedural and evidentiary requirements for extradition might find that the extradition requests they submitted did not meet the requirements of a requested Party.

50. In his opinion the practical difficulties surrounding the provisions of article 4, paragraph 8, had been underestimated. Any attempt to make them automatic would merely increase conflicts of jurisdiction over extradition cases, from which conflicts only the drug traffickers would benefit.

51. Mr. OUCHARIF (Morocco) supported the spirit of the United States amendment: persons who were not extradited should not escape justice. However, the proposed convention could not make it binding on States to prosecute: prosecution was a matter for the competent authorities.

52. Mrs. HUSSEIN (Malaysia) said that the grounds for declining to extradite set out in article 2 bis, paragraphs 2(a)(i), 2(a)(ii) and the first variant of 2(a)(iii) were acceptable to her delegation. She supported the introductory clause “Without prejudice to the exercise of any other jurisdiction” in article 4, paragraph 8(a), of the draft convention, but could accept the wording for paragraph 8 proposed by the United States if it was amended, as suggested by the representative of Saudi Arabia, to read “Without prejudice to the power of each Party to exercise jurisdiction in accordance with its domestic law”.

53. Mr. KATHOLNIGG (Federal Republic of Germany) said that the aim of the Conference was to adopt a strong convention against illicit traffic in drugs and to close all legal loopholes to traffickers. He feared, however, that some participating States, while strongly supporting the convention, might find it impossible, under their domestic legal systems, either to extradite or to prosecute drug traffickers. He reminded the Committee that traffickers would be looking for just such countries. He therefore agreed with the representative of Argentina and supported the introduction of strong aut dedere aut judicare provisions. Some States were unwilling to go so far, however, and the United States proposal was a suitable compromise.

54. His query as to the significance of the phrase “if requested by the requesting Party” had been answered by the representative of the Netherlands and he was prepared to accept the phrase if some countries thought it necessary. He had had doubts about the phrase “on the grounds set forth in paragraph 2(a) of article 2 bis” but now considered that those grounds were adequately covered in the United States proposal. He suggested, however, that as the phrase “on any other ground” appeared also in article 2 bis, paragraph 2(b), the words “paragraph 2(a) of” in the fifth line of the United States proposal should be deleted. The reference to article 2 bis in the second line of the United States text should not be deleted, as it referred to the requirement to establish jurisdiction. The mandatory expression “shall” in the fifth line of that text was not too strong, as the only requirement laid down was that the case be submitted without undue delay to the competent authorities.

55. Mr. OSHIKIRI (Japan) said that, in listing grounds for refusal to extradite, it was important to separate the two alternatives. The grounds listed in article 4, paragraph 3, should also be mentioned in article 2 bis and the paragraphs in the different articles should correspond closely. The convention must not, however, be made too restrictive. Where a Party had concluded extradition agreements with other Parties, there might be no need for a request and no grounds for refusal. The inclusion of a reference to territoriality would open the door to a situation in which a Party might request extradition of a person for what was a purely domestic offence. Were the Committee to adopt the United States amendment, he would like to see some improvement of certain phrases, such as “declines to extradite” and “if requested by the requesting Party”.

56. Mr. SHING (Mauritius) said that the United States amendment (E/CONF.82/C.1/L.30) created an obligation for States Parties to consider a prosecution in cases where extradition had been refused. He considered it reasonable to expect Parties to institute criminal proceedings in appropriate cases.

57. Mr. VICTOR (Sweden) said that the Nordic countries strongly supported the principle aut dedere aut judicare and therefore considered that the enumeration of grounds in article 2 bis, paragraph 2, should be as comprehensive as possible. Any limitation of the grounds might give rise to problems, in particular a lack of balance. The United States delegation had proposed that the only ground should be the fact that the offence was
committed by a national, in which case article 4, paragraph 8, would apply if extradition had not taken place. The situation would then lack balance since an obligation would be imposed only on countries which did not extradite their nationals. Furthermore, nationals would be in a more unfavourable situation than persons who could not be extradited. If there was an obligation to exercise jurisdiction, it would then follow that quite minor cases would fall under that obligation. It was doubtful whether all countries would be able to extend their jurisdiction to all the cases referred to in article 2 bis, paragraph 1; a suitable safeguard clause should therefore be included.

58. Mrs. KATHREIN (Austria) said that the conditions set forth in article 2 bis and those in article 4, paragraph 8, should be examined together. The requirement was to establish extraterritorial jurisdiction and then to exercise it. Her delegation believed that a wider basis should be established for extradition, but she preferred that no reference be made in the convention to habitual residence as a ground for refusal to extradite.

59. Mr. MADDEN (Jamaica) said that he could accept the rationale of the United States proposal but not some of its language. A State would surely submit a case to its competent authorities for prosecution only if it was justified in doing so in the light of all the circumstances. The proposal appeared to subordinate the State's decision to a request by the requesting Party and the reference to article 2 bis, paragraph 2(a), was in his view too restrictive. It should either be omitted altogether or expanded to include paragraph 2 as a whole.

60. Mr. GONZALEZ FELIX (Mexico) said that his delegation supported the United States amendment but would like to see the phrase "without undue delay" in it deleted.

61. Mr. STEWART (United States of America), responding to the comments of representatives on his delegation's proposal, said he had understood that article 2 bis would include a provision referring to the establishment of jurisdiction and its exercise by the Parties; the United States amendment had accordingly not reproduced all the elements in article 4, paragraph 8, of the draft convention. The question of the obligation to prosecute at the request of the requesting Party had been very adequately dealt with by the representative of the Netherlands. Some speakers had raised the question whether the introductory phrase of the proposed paragraph 8 should refer to article 2 bis, paragraph 1, or only to domestic law. The suggestion made in that connection by the Netherlands representative was sound and sharpened the focus of the United States proposal. He had no objection to the wording of the proposal being aligned with that of existing conventions, the words "declines to extradite", for example, being replaced by "does not extradite". On the other hand, the phrase "without undue delay" was in his view important. The question of delay was in fact referred to in most existing conventions. The reference to "a person" was quite clear in the English language, but he would have no objection to the use of the term "offender" or "accused" if the Committee so wished.

62. Mrs. MARTINS (Portugal) said that she was in favour of specifying in article 2 bis the widest possible range of grounds for refusing extradition, as that would ensure a proper balance.

63. Mrs. VEVIA (Spain) said that several delegations had wished to broaden the range of grounds for refusal of extradition in article 2 bis. If the list were to be extended and the draft convention's optional form of provision were adopted, there would be a lack of conformity between the establishment of jurisdiction and the obligation to submit the case to the competent authorities, since the requirements laid down in article 4, paragraph 8, were not binding obligations. The words "without undue delay" were essential, since without them offenders would lose no time in leaving the country concerned. She preferred the expression "alleged offender" to "person".

64. Mr. POPOV (Bulgaria) said that the United States proposal was in essence soundly based, although some shortcomings in the text had been revealed by the comments of delegations. Unfortunately the Committee was not yet in a position to take a final decision on the proposal, since the wording of article 2 bis, paragraph 1, had not yet been finalized and paragraph 2 of the article was still in abeyance. The Committee should for the time being base its discussions on the United States proposal, taking into account the amendments to it which had been proposed. He intended to submit a variant of the text which he hoped might clarify certain points.

65. The CHAIRMAN said that the Committee's aim should now be to reach agreement on those aspects of article 4, paragraph 8, which did not refer to article 2 bis. Some delegations wished the paragraph to refer to domestic law alone, while others thought it should include a reference to jurisdiction established in accordance with article 2 bis or domestic law. The Committee's preference appeared to be for the first of the two bracketed alternatives in article 4, paragraph 8(a), of the draft convention. If it was accepted that article 4, paragraph 8, would not prejudice any duly established jurisdiction, the wider formulation could be used. In any event paragraph 8 did not—and could not—affect the right of Parties to exercise jurisdiction in accordance with their domestic law. The general feeling in the Committee appeared to be in favour of the first alternative in the draft convention text "without prejudice to the exercise of any other jurisdiction". Another point to be considered was the advisability of modelling the convention on the language of other existing conventions. Other points requiring decisions were the proposals to modify terminology—replacement of "person" by "alleged offender"—and some proposed deletions.

66. He noted that some delegations had found the proposed language too specific and others insufficiently so. The words "without undue delay" had aroused some opposition, but the question of delay was important and had been mentioned in many other conventions. Unfortunately there appeared to be no general agreement on the grounds for refusal of extradition to be indicated by a reference to article 2 bis, paragraph 2.
67. In an attempt to resolve the difficulties which had arisen and to provide a basis for further discussion, he proposed for the Committee's consideration the following text to replace article 4, paragraph 8:

"Without prejudice to the exercise of any criminal jurisdiction established in accordance with its law, a Party, in whose territory an alleged offender is found, shall submit the case [without undue delay] to its competent authorities for the purpose of prosecution, if it does not extradite him in respect of an offence established in accordance with article 2 bis, paragraph 1, on the grounds set forth in article 2 bis, paragraph 2(a), if requested by the requesting Party."

68. Mr. KATHOLNIGG (Federal Republic of Germany) drew the Committee's attention to article 7 of the Convention on the Prevention and Punishment of Crimes Against International Protected Persons, including Diplomatic Agents which employed the formula "submit, without any exception whatsoever and without undue delay, the case to its competent authorities".

The meeting rose at 10.45 p.m.

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20th meeting

Thursday, 8 December 1988, at 10.35 a.m

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4, paragraph 8 (continued) (E/CONF.82/C.1/L.30)

1. The CHAIRMAN proposed the following text for article 4, paragraph 8:

"Without prejudice to the exercise of any criminal jurisdiction established in accordance with its law, a Party, in whose territory the alleged offender is found, shall submit the case [without undue delay] to its competent authorities for the purpose of prosecution, if it does not extradite him in respect of an offence established in accordance with article 2 bis, paragraph 1, on the grounds set forth in article 2 bis, paragraph 2(a), if requested by the requesting Party."

2. He said that the text he had just read out was virtually identical with the one which he had suggested at the end of the previous meeting (E/CONF.82/C.1/SR.19, paragraph 67) and that it incorporated the results of the debate at that meeting. Two questions were still outstanding: the grounds on which a request for extradition could be refused, which related to article 2 bis, paragraph 2; and the inclusion of the phrase "without undue delay". In both cases the relevant part of the text had been placed in square brackets.

3. He suggested that the Committee first consider whether or not it wished the words "without undue delay" to be included in article 4, paragraph 8. He reminded it that a very recent international convention—the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation—used the phrase "without delay" in connection with the same matter, whereas other conventions used different wording.

4. Mr. OUCHARIF (Morocco) said that he could agree to the inclusion of the words "without undue delay".

5. Mr. FOFANA (Senegal) said that he preferred the phrase "without delay".

6. Mr. TEWARI (India) suggested that the words "without undue delay" should be replaced by the phrase "within a reasonable time".

7. With regard to the grounds for refusing a request for extradition, he pointed out that four were listed in article 2 bis, paragraph 2(a), while paragraph 2(b) of that article referred to "any other ground". He therefore considered that both paragraphs 2(a) and (b) of article 2 bis should be mentioned in article 4, paragraph 8. The first version of article 2 bis, paragraph 2(a)(iii), which referred to an alleged offender already facing the death penalty in the requesting State, might be deleted.

8. Mr. GUNAY (Turkey) said that, in view of the practice generally followed in similar United Nations conventions, he approved the use of the expression "without delay".

9. Mr. YAHIAOUI (Algeria) opposed the use of the words "without undue delay".

10. Mr. POPOV (Bulgaria) said that he could accept the redraft of paragraph 8 proposed by the Chairman. He pointed out, however, that comparable texts in United Nations conventions contained formulations such as "without delay" or "without unjustified delay", or even omitted such a phrase altogether. To try to establish a precedent by reference to previous conventions was therefore pointless. The difficulty with the word "undue" was
that no objective criterion existed for determining its meaning. One country might regard a five day delay as undue, whereas another might set the limit at 50 days. Thus from both a practical and a legal point of view the term served no purpose and would only give rise to misunderstanding.

11. The final phrase "if so requested by the requesting Party" also raised a difficulty. Did it mean that no action would be taken if no request was made? In that connection, he drew attention to the corresponding wording of the amendment submitted by the United States of America (E/CONF.82/C.1/L.30).

12. The reference in the Chairman's redraft to article 2 bis, paragraph 2, was premature for both practical and legal reasons, since the Committee was still far from solving the problem of the grounds on which extradition could be refused.

13. Mr. AL-NOWAISER (Saudi Arabia) opposed the inclusion of the words "without undue delay" in paragraph 8. As his own country's legal procedures tended to be lengthy, he favoured some degree of flexibility in the text. Furthermore, the proposed wording did not make it clear whether the requesting or the requested Party would be responsible for deciding whether undue delay had occurred.

14. Mr. MADDEN (Jamaica) considered the phrase "without undue delay" unnecessary.

15. Mrs. KATHREIN (Austria) said that she could accept the text either with or without the words "without undue delay", which in her view made no great difference to its meaning. The words "without delay" might be acceptable as a compromise.

16. The CHAIRMAN said he took it that there was a consensus in favour of deleting the words "without undue delay" from his proposal.

17. It was so agreed.

18. After a procedural discussion in which Mr. LAVIÑA (Philippines), Mr. AL-NOWAISER (Saudi Arabia), Mr. OUCHARIF (Morocco) and Mr. GONZALEZ FELIX (Mexico) took part, the CHAIRMAN asked the Committee if it wished to continue its examination of article 4, paragraph 8, on the basis of his proposal, with the exception of the reference to article 2 bis, paragraph 2, which would be placed in square brackets; and to return to the phrase in square brackets once article 2 bis, paragraph 2, had been approved.

19. It was so agreed.

20. Mr. BRUCE (Ghana) said that he had joined the consensus in favour of deleting the phrase "without undue delay" with some misgivings, because he felt that justice delayed was justice denied. Much had been done to produce an acceptable formulation of article 4, paragraph 8. He realized that some countries faced constitutional obstacles to the extradition of their nationals, but it could not be proper for any State to protect a criminal from prosecution on constitutional grounds. Because some countries were used for transit purposes by drug traffickers, it was essential not to create any loopholes; criminals of any nationality would thus be aware that they could not escape the full rigour of the law. The paragraph must be framed in that light. The West African countries, which had recently produced a master plan to combat drug abuse, wished to see an effective convention emerge from the Conference.

21. Mr. AL-NOWAISER (Saudi Arabia) suggested that the words "for the purpose of prosecution" should be replaced by the words "to consider prosecution".

22. Mr. MADDEN (Jamaica) said that the paragraph need not provide for a request by the requesting Party; it should leave open the question of the procedure to be followed. The requested Party might perhaps be required to give consideration to the aims and purposes of the convention in determining how a successful prosecution could be achieved. The eventual formulation of article 6 by Committee II might provide means whereby the requesting and the requested Parties could collaborate on individual cases. He felt it would be unproductive to make prosecution conditional upon a request by the requesting Party.

23. Mr. PAREJO GONZALEZ (Colombia) said that the clause "if so requested by the requesting Party" should be deleted. According to the principle aut dedere aut judicare, the obligation to bring an offender to trial did not arise from a request for prosecution by the requesting State, but from the decision of the requested State to refuse extradition.

24. He considered that the phrase "on the grounds set forth in article 2 bis, paragraph 2(a)," should be deleted. Whatever grounds the requested State might have for refusing extradition, its obligation to prosecute an offence established in accordance with article 2, paragraph 1, ought to arise when it denied the request for extradition. Hence the deletion of the reference to article 2 bis would leave untouched the principle of aut dedere aut judicare.

25. Mr. LAVIÑA (Philippines) endorsed the remarks made by the representatives of Bulgaria, Austria, Jamaica and Colombia. He agreed that the words "if so requested by the requesting Party" should be deleted. Since the requested Party had an obligation to prosecute, that obligation should be expressed in unconditional terms.

26. Mr. XU Hong (China) agreed that the words in question should be deleted. The convention, like others prohibiting internationally wrongful acts, should provide a powerful tool for combating illicit drug trafficking. The principle aut dedere aut judicare, required a State which refused to extradite an offender to prosecute under its domestic law; that obligation would be weakened if the convention made it conditional on a request by the Party seeking extradition.
27. Mr. ASSADI (Islamic Republic of Iran) said that he could agree to the Chairman’s reformulation of article 4, paragraph 8, subject to the Committee’s decision on the elements contained in article 2 bis, paragraph 2(a).

28. Mr. SAMIA (Libyan Arab Jamahiriya) said that his delegation had no objection to the concluding portion of article 4, paragraph 8 as proposed by the Chairman.

29. Mr. SCHUTTE (Netherlands) agreed with the views expressed by the representative of Ghana. His own country, after 150 years, had recently decided to agree in certain circumstances to the extradition of Netherlands nationals, even for offences committed abroad. He stressed the need for the word “alleged” to appear before the word “offender” in article 4, paragraph 8. Referring to the amendment submitted by Yemen (E/CONF.82/C.1/L.21), he asked to what extent the paragraph as proposed by the Chairman would apply to the extradition of persons already convicted of offences under article 2, paragraph 1. There was also the question of the relationship, in article 4, between paragraph 8 and paragraph 9. Paragraph 9 contained the words “upon application of the requesting Party”. By agreement between the two Parties concerned, it might be possible for the requested Party simply to enforce a sentence, or the remainder thereof, imposed by the other Party, without the necessity of a further prosecution.

30. To delete the words “if so requested by the requesting Party” in paragraph 8 would be to weaken that provision. Practical experience, however, pointed to the possibility that a requesting State faced with the likelihood of extradition being refused might avoid seeking extradition, and instead attempt to have the alleged offender removed to its jurisdiction by means improper to international criminal law. To avert that risk, and to ensure that the principle aut dedere aut judicare was respected, he suggested replacing the words in question by the words “unless otherwise agreed by the requesting Party.” He could not agree to delete the proviso outright; to do so would serve the interests of organized international crime rather than international co-operation.

31. Mrs. JONES (United Kingdom) said she shared those views. She suggested replacing the words “an alleged offender” by the words “an offender or alleged offender”. She agreed that the grounds for refusing extradition should not be specified until article 2 bis had been finalized.

32. Mr. JANSZ (Sri Lanka) said he accepted the Chairman’s proposal in principle. He felt, however, that the phrase now in square brackets— “[on the grounds set forth in article 2 bis, paragraph 2(a)]”—might be deleted altogether, since it merely qualified the preceding clause. Moreover, since the grounds for refusing extradition were to be defined in article 2 bis, it was unnecessary to refer to them in article 4, paragraph 8. To use the term “alleged offender” could cause misunderstanding; it would be better to mention convicted offenders. He supported the idea that the final proviso should be worded more appropriately.

33. Mr. GUNAY (Turkey) said that the proviso should be deleted, since the requested State had a clear obligation to prosecute if extradition was sought and refused. Moreover, the decision should lie with the State on whose territory the offender was at the time.

34. Mr. BAENYENS (France) approved the formulation of paragraph 8 as proposed by the Chairman. He would have preferred the words “without undue delay” not to have been deleted. He had no objection to the words “if so requested by the requesting Party", and would like to see a similar formulation in paragraph 9.

35. Mrs. OLIVEROS (Argentina) favoured the deletion of the concluding proviso from the Chairman’s formulation of paragraph 8.

36. Mrs. DZIETAM (Cameroon) said that the obligation to prosecute must be expressed in binding terms. She could accept the Chairman’s reformulation of the paragraph and regretted the deletion of the words “without undue delay”.

37. Mr. METAXAS (Greece) supported the proposal to delete the concluding proviso. He pointed out that Greek nationals were criminally liable under Greek law for offences, including illicit drug trafficking, committed anywhere in the world.

38. Mr. OSHIKIRI (Japan) said that the views expressed by the representative of the Netherlands convinced him that the words “if so requested by the requesting Party” should be retained. Any Party which established an offence according to the convention was obliged to see justice done. That obligation remained even if it did not extradite the offender. Indeed, the failure to extradite would itself give rise to the obligation.

39. The CHAIRMAN noted that those representatives who had favoured the deletion of the concluding proviso from his reformulation of paragraph 8 had done so from their awareness of the danger that the proviso would make the exercise of the power of prosecution conditional on a request to that effect by another Party. As a compromise between their view and that of delegations which favoured the retention of the proviso, he proposed that it should read: “unless otherwise agreed with the requesting Party”. That would allow the two States concerned, after consultation between themselves, to decide that prosecution in the requested State was not the appropriate method of administering justice in the case in question.

40. Mr. YAHOIAOUI (Algeria) said that the draft must link jurisdiction and recognize extradition procedures adequately. Article 4, paragraph 8, must be unambiguous and article 2 bis had not yet been approved. The chief concern in article 4, paragraph 8, was to ensure that no offenders escaped prosecution; in that light, the grounds for refusing extradition were unimportant. He therefore suggested the following wording for the paragraph:

“Without prejudice to the exercise of any criminal jurisdiction in accordance with its domestic law,
Party on whose territory an alleged perpetrator of an offence defined in article 2, paragraph 1, is found shall, if it does not extradite him, expedite the submission of the case to its competent authorities for the purpose of prosecution”.

41. Mr. GUNÉY (Turkey) said that his delegation approved the text proposed by the Chairman in its revised form.

42. Mrs. PONROY (France) said that she could not accept the Chairman’s proposal to use the words “unless otherwise agreed with the requesting Party”, because the agreement which they contemplated would restrict the exercise of criminal jurisdiction to a single State.

43. Mr. LAVIÑA (Philippines) supported that view. He suggested that the proviso should read “especially if so requested by the requesting Party”.

44. Mr. TEWAR1 (India) said that his delegation would like to see the words “if so requested by the requesting Party” deleted. It felt, however, that the Chairman’s proposed reformulation of the proviso might meet with general approval.

45. Mrs. VEVIA (Spain) said that she had no objection to the deletion of the words “if so requested by the requesting Party”. The Chairman’s proposed reformulation of the phrase, although it was not couched in the standard terms found in extradition treaties, was acceptable. The Philippine representative’s proposal also seemed acceptable but required further study.

46. Mr. MADDEN (Jamaica) said that the Chairman’s compromise reformulation was acceptable to his delegation.

47. Mr. DURAY (Belgium) said that he, too, could accept it in the light of the Chairman’s explanation of its effect.

48. Mr. GONZALEZ FELIX (Mexico) said that the Chairman’s compromise formulation presented some difficulty. It seem to imply that the agreement of the requesting Party was necessary for the requested Party to submit the case to its competent authorities for the purpose of prosecution. The support of the requesting Party would be needed for that, particularly in the investigation stage and in regard to evidence. He suggested that the paragraph might conclude with the words “particularly if so requested by the requesting Party, and will be able to count on its support”.

49. Mrs. KATHREIN (Austria) said that she associated herself with the view expressed by the representative of France. It would not be possible for Austria to reach an agreement of the kind contemplated. The Chairman’s reformulation of the concluding proviso might nevertheless be acceptable if it was closely associated with the opening words “without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law”.

50. Mr. SCHUTTE (Netherlands) suggested that the idea referred to by the Austrian representative might be expressed by deleting the words “without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law” and adding the following sentence to the paragraph: “The absence of any such agreement shall be without prejudice to the right of the requesting Party to exercise any criminal jurisdiction established in accordance with its domestic law”.

51. Mr. GONZALEZ FELIX (Mexico) approved the Netherlands proposal.

52. Mr. MADDEN (Jamaica) asked for clarification of the meaning of the words “unless otherwise agreed with the requesting Party”.

53. Mr. YAHIAOUI (Algeria) said that in his country the prosecution of alleged drug traffickers was governed by the 1982 Public Health Act, but countries without legislation requiring them to prosecute such offenders clearly had a problem with article 4, paragraph 8.

54. Mr. LAVIÑA (Philippines) said that the words “unless otherwise agreed with the requesting Party” might cause confusion. He would like the paragraph not to contain the concluding proviso reading “if so requested by the requesting Party”. Furthermore, he wished the phrase “without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law” to appear at the beginning of the paragraph so that it would qualify the succeeding words.

55. Mr. KURAA (Egypt) said that he agreed that the words “unless otherwise agreed with the requesting Party” might create misunderstanding. He proposed that the words “if so requested by the requesting Party” should be replaced by the following sentence: “If the requesting Party does not request it, the requested Party will not submit the case to its competent authorities for the purpose of prosecution.”

56. Mr. AL-NOWAISER (Saudi Arabia) said that he could accept the Chairman’s redraft of article 4, paragraph 8, with the exception of the concluding words “if so requested by the requesting Party”.

57. Mrs. KATHREIN (Austria) said that, in her view, the Netherlands proposal would place too much emphasis on an agreement with a requesting Party. She would prefer the order of words to remain as they were in the Chairman’s original redraft, provided it was understood that the words “unless otherwise agreed with the requesting Party” would impose no obligation on a Party to reach the agreement contemplated.

58. Mr. SCHUTTE (Netherlands) opposed the Philippines proposal for the concluding proviso. The insertion of the word “especially” was tautological.

59. Mr. PAREJO GONZALEZ (Colombia) said that he did not think that article 4, paragraph 8, would be
weakened by the deletion of the words “if so requested by the requesting Party”.

60. The CHAIRMAN said that there seemed to be insufficient support for the concluding proviso suggested by the representative of the Philippines. He asked the Committee if it agreed that the proviso should read “unless otherwise agreed with the requesting Party”.

61. It was so decided.

62. The CHAIRMAN invited the Committee to consider the Sri Lankan suggestion, the effect of which might be achieved by replacing the words “alleged offender” by “accused or convicted person”.

63. Mr. PAREJO GONZALEZ (Colombia) said that he preferred the words “alleged offender”.

64. Mr. MADDEN (Jamaica) said that in Jamaica a convicted person could not be prosecuted again for the same offence. He too preferred the term “alleged offender”.

65. Mr. SAMIA (Libyan Arab Jamahiriya) said that he had doubts about the use of the word “accused”.

66. The CHAIRMAN said he took it that the Committee agreed to retain the term “alleged offender”.

67. It was so decided.

68. The CHAIRMAN read out the text of article 4, paragraph 8, as originally proposed by him and amended by the Committee:

“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 to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party.”

69. The text proposed by the Algerian representative for article 4, paragraph 8, was still under consideration. The square brackets in the text which he had just read out related to the point raised by Algeria and indicated that it was to be discussed along with any other matters in the paragraph that concerned article 2 bis.

EXPRESSION OF SYMPATHY IN CONNECTION WITH THE RECENT EARTHQUAKE IN THE UNION OF SOVIET SOCIALIST REPUBLICS

70. The CHAIRMAN, on behalf of the Committee, expressed sympathy in connection with the recent earthquake in the Armenian Soviet Socialist Republic.

71. On the proposal of the Chairman, the Committee observed a minute of silence.

The meeting rose at 1.10 p.m.

21st meeting

Thursday, 8 December 1988, at 3.25 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4, paragraph 8 (continued)
(E/CONF.82/C.1/L.30)

1. The CHAIRMAN said that, following consideration of article 4, paragraph 8, and various proposals for its amendment at the previous meeting, he had understood that a consensus had been reached in the Committee on suitable wording for that paragraph, the text arrived at being the following:

“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 to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party.”

2. He invited the Committee to indicate the existence of agreement on that text.

3. Mr. PAREJO GONZALEZ (Colombia) said it was his undertaking that the final part of that text had not been approved, approval having been given only as far as the words “... for the purpose of prosecution”. Serious reservations had been expressed by delegations regarding the remainder of the text, particularly the
replacement of the words “if so requested by the requesting Party” by the words “unless otherwise agreed with the requesting Party”. Various delegations had indicated that it would accept no sub-condition affecting prosecution.

4. Mr. GAUTIER (France) agreed with the delegation of Colombia. His delegation had indicated that it could accept the replacement of those words by the phrase “unless otherwise agreed with the requesting Party”.

5. Mr. GONZALEZ FELIX (Mexico) said that he agreed with the Colombian and French representatives. His delegation could have accepted the Australian delegation’s proposal in that connection, which had not, however, been approved.

6. Mr. ABED YAHIAOUI (Algeria) recalled the proposal for a rewording of article 4, paragraph 8, which his delegation had made at the previous meeting. He hoped that the Algerian proposal would be considered further.

7. Ms. DIEZTHAM (Cameroon) said that her delegation also shared the views expressed by the delegations of Colombia and France.

8. The CHAIRMAN said it was his understanding that there had been agreement at the previous meeting that article 4, paragraph 8, should end with the words “unless otherwise agreed with the requesting Party”.

9. The proposal by the representative of Algeria related to the part of the text he had read out which was in square brackets. It might be examined in conjunction with article 2 bis.

10. He believed that only two delegations had favoured including no reference to grounds for refusal in paragraph 8 and that there had been a general preference for mentioning some grounds for refusal.

11. It had been pointed out that inclusion in the paragraph of the phrase “unless otherwise agreed with the requesting Party” did not impose any condition on the exercise of jurisdiction and it had been clear to him that there had been a consensus on the last phrase of paragraph 8, although a formal consensus had not been reached on the paragraph as a whole.

12. Mr. GONZALEZ FELIX (Mexico) said he had understood it to be the intent of the United States amendment (E/CONF.82/C.1/L.30) that the provision it contained could be invoked by the requesting Party in order to obtain compliance with its terms. Many delegations had stated that, in order to give strength to the convention, it was necessary for the obligation to prosecute a person who had not been extradited to be independent of whether the requesting Party requested prosecution. Following some discussion, it had been proposed by the Chairman that the words “if so requested by the requesting Party” should not be included in the paragraph. The effect of that would be to broaden the provision considerably so that it would cover even a request for extradition of a national.

13. A drafting amendment suggested by the Netherlands representative and involving a paragraph additional to paragraph 8 had been acceptable to the Mexican delegation, provided it took account of domestic law. That amendment had not been accepted, however, and he therefore wished to propose a new wording for article 4, paragraph 8, which would be along the lines of the text read out by the Chairman, but would be more restricted and specific.

14. The CHAIRMAN said that, although a consensus had previously been reached he believed the discussion could nevertheless be reopened, so that the proposal of the representative of Mexico might be considered. He took it that there was no objection to a reopening of the discussion.

15. It was so agreed.

16. Mr. GONZALEZ FELIX (Mexico) said that his delegation’s proposal was to modify the text of the United States amendment (E/CONF.82/C.1/L.30) by deleting the words “if requested by the requesting Party” and adding after that text a new paragraph reading:

“The requesting Party may in any event request the requested Party to implement this provision”.

17. Mr. PAREJO GONZALEZ (Colombia) said he did not believe that the Mexican proposal would lead to a consensus.

18. He understood the Committee to be now considering the wording for article 4, paragraph 8, proposed by the Chairman and he believed it had been virtually decided to delete from it the phrase “if so requested by the requesting Party”. A clear decision should be taken on that point.

19. Mr. AL-NOWAISER (Saudi Arabia) requested confirmation of the reopening of discussion on what had been decided at the previous meeting. He understood it had been agreed at that meeting to accept wording proposed by the Chairman.

20. After his delegation, in order to facilitate a consensus, had yielded on certain points to which it had been very attached, it now saw those very same points being raised again. Was such a procedure to set a precedent for the Committee’s future deliberations?

21. The CHAIRMAN said that no objection to the reopening of discussion had been expressed when he had asked if there was objection. He invited the Secretary of the Committee to indicate what had transpired.

22. Mr. BAILLEY (Secretary of the Committee) said that it had been decided after considerable discussion that the phrase “if so requested by the requesting Party” was not to be included in the text. The Chairman had suggested the replacement of those words by the phrase “unless otherwise agreed with the requesting Party”. That wording had earlier caused some discussion because it had at one point been read out as “unless otherwise agreed by the
requesting Party", implying that the requesting Party had some additional right or authority. However, it had later been corrected to "unless otherwise agreed with the requesting Party". It had been agreed, by consensus and without dissent, that article 4, paragraph 8, should end with that phrase.

23. If the Committee desired to reopen the issue, rule 33 of the rules of procedure would apply.

24. The CHAIRMAN invited the Secretary of the Committee to read out the text of that rule.

25. Mr. BAILEY (Secretary of the Committee) read out rule 33 of the rules of procedure of the Conference.

26. Mrs. OLIVEROS (Argentina) said that her delegation supported the view expressed by the delegation of Colombia.

27. Mr. LAVIÑA (Philippines) said that it would be wiser to adopt a flexible approach, in an attempt to reach consensus, rather than strictly to follow the rules of procedure.

28. He had not been present at the end of the previous meeting. If there had been agreement to use the phrase "unless otherwise agreed with the requesting Party", then his delegation would abide by that agreement, but with some reservations. In his opinion there had not in fact been a consensus. A number of delegations had objected to that phrase.

29. In view of the extent of the disagreement concerning the final phrase of paragraph 4 proposed by the Chairman, he suggested that the paragraph should end with the words "for the purpose of prosecution".

30. The CHAIRMAN reiterated that, when he had asked whether there was objection to a reopening of the discussion, it had been his impression that no objection had been voiced.

31. He supported the view of the representative of the Philippines that a consensus approach was preferable.

32. Mr. ERNER (Turkey) said that in his view there had been consensus at the previous meeting on the Chairman's wise compromise proposal. Had he been present earlier, he would have objected to the reopening of the discussion. He suggested an informal procedure, such as a show of hands, to decide whether or not the discussion should be reopened.

33. Mr. AL-NOWAISER (Saudi Arabia) said that he had been occupied earlier in the meeting when the Chairman had enquired about reopening the discussion. Had he heard the Chairman's question, he would have objected to a reopening.

34. He supported the remarks of the representative of Turkey and asked the Chairman and the Committee to respect the agreement reached at the end of the previous meeting. Those who might have had an objection could have objected at that time and reopened the discussion.

35. He recalled that, during the absence of the representative of the Philippines from the previous meeting, the Chairman had drawn attention to the proposal of the delegation of the Philippines. That proposal had, however, been rejected in favour of the Chairman's proposal.

36. Mr. GAUTIER (France) said that his delegation was among those which felt that consensus had not been reached at the previous meeting on the wording for article 4, paragraph 8, proposed by the Chairman, and particularly on the last phrase thereof. The situation in the final part of that meeting had been confused and he had not been able to take the floor to express his view. His delegation would nevertheless accept the Chairman's decision, entering a reservation if necessary.

37. Mr. KESSELA MOULAT (Ethiopia) said that his delegation endorsed what had been said by the representatives of Saudi Arabia and Turkey. In his view there had been consensus at the previous meeting in favour of the wording of article 4, paragraph 8, then read out by the Chairman.

38. The CHAIRMAN said it was clear that some delegations wished to reopen the discussion. He asked whether that was the wish of the Committee as a whole and suggested that the procedural suggestion of the representative of Turkey might be followed.

39. Mr. GONZALEZ FELIX (Mexico) said that it had not been his delegation's intention to reopen the discussion, but he had been prompted to take the floor by the views expressed by the delegations of Colombia and France. His delegation could accept the wording which had been proposed by the Chairman, if it was accompanied by an interpretative statement.

40. Mrs. OLIVEROS (Argentina) said she did not believe there was a general desire to reopen the discussion. It was her delegation's understanding that agreement had been reached on the wording proposed by the Chairman with the exception of the last phrase.

41. Mr. GAUTIER (France) said that he simply wished to indicate his astonishment on being informed that the discussion was closed and that a consensus had already been reached on article 4, paragraph 8. He was unhappy with the procedure followed in dealing with the question of reopening the discussion.

42. The CHAIRMAN said that there might have been some misunderstanding at the end of the previous meeting, but a decision had clearly been reached and recorded.

43. Mr. BOBIASZ (Canada) suggested that those delegations which had difficulty in accepting the final phrase of article 4, paragraph 8, as currently worded, should seek together to produce a replacement formula which would satisfy both those countries which believed
that the possibility of entering into an agreement was useful and those countries which were unable to provide for that possibility under their legal system. Discussion of the final phrase could thus be suspended for the time being and the Committee could meanwhile take up article 2 bis.

44. Mr. AL-NOWAISER (Saudi Arabia) said it was clear that many delegations were opposed to a reopening of the discussion on article 4, paragraph 8, considering that consensus had been reached at the end of the previous meeting. He asked the Chairman to indicate whether the discussion was reopened.

45. The CHAIRMAN said that he had received no clear request for a reopening of the discussion on article 4, paragraph 8. It was therefore his ruling that the discussion should not be reopened and that the wording of that provision was approved as agreed at the Committee's 20th meeting.

Article 2 bis (continued) (E/CONF.82/C.1/L.22-24)

46. The CHAIRMAN recalled that the Committee had as yet taken no decision concerning article 2 bis, paragraph 1(b), pending action on article 12, to which reference was made in subparagraph 1(b)(ii). It had approved paragraph 3, as it appeared in the draft convention, and still had to take a decision on paragraph 2, to which article 4, paragraph 8, referred.

47. Mr. LAVIÑA (Philippines) said that article 2 bis, paragraph 2(a), contained a bewildering notion which would establish jurisdiction on the basis of the mere presence of the alleged offender in the territory of the State purporting to exercise jurisdiction. Perhaps the intention was that a request for extradition should not be made if the alleged offender was not in the territory of the State exercising jurisdiction. In order to resolve the problem he proposed that paragraph 2 in its entirety should be amended to read:

"Each Party should 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 it does not extradite the alleged offender to another Party in view of the provisions of article 4, paragraph 5".

48. Article 4, paragraph 5, referred to the grounds on which a requested State might deny extradition. That provision would leave to domestic law the grounds on which extradition might or might not be granted and would automatically bring into play article 4, paragraph 8.

49. Mr. TEWAR (India) proposed that paragraph 2(a)(ii) should be amended to read "that the offence has been committed by a national, or by a person in its territory".

50. Paragraph 2(a)(iii) could be maintained and the variant thereof should have its square brackets deleted and should be renumbered "(iv)".

51. Since paragraph 2(b) virtually repeated the terms of paragraph 2(a), it could be renumbered "(v)" and reduced to the following: "any ground other than those specified in subparagraphs (i) to (iv)".

52. The CHAIRMAN recalled that the Committee had already decided that the beginning of paragraph 1(a) should read as follows: "Each Party shall take such measures as may be necessary to establish . . .", and that the word "exercise" should be deleted. It had also decided to delete in paragraph 1(b)(i) the bracketed phrase "if in both cases the alleged offender is located in its territory".

53. Mr. VICTOR (Sweden), speaking on behalf of the delegations of Denmark, Finland, Norway and Sweden, said that they now wished to propose that article 2 bis, paragraph 2, should read:

"Each Party shall, subject to its constitutional limitations and the basic principles of its legal system, 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 at the request of another Party".

54. The words "on the grounds set forth in article 2" should not appear in article 4, paragraph 8. They should be replaced by the following: "and the offence is one over which that Party has jurisdiction in accordance with article 2 bis, paragraph 2".

55. The Nordic delegations wished to lay stress on the principle aut dedere aut judicare. They realized, however, that that was not acceptable to many delegations because of their legal system. That was why they included in their proposed wording the safeguard clause "subject to its constitutional limitations and the basic principles of its legal system".

56. Mr. OSHIKIRI (Japan) said that his delegation would prefer to see the word "establish" used, instead of "exercise", in the introductory part of paragraph 2(a), as it was in paragraph 1(a) of the article.

57. His delegation had some difficulty with the provision in subparagraph 1(a)(i) and saw a discrepancy between paragraphs 1(a) and 2(a). He suggested that subparagraph 1(a)(i) should be deleted and that the reference to article 2 bis, paragraph 2(a), in article 4, paragraph 8, should be modified accordingly. He also suggested that the words in square brackets in subparagraph 2(a)(ii) should be deleted as they had been in subparagraph 1(b)(i).

58. His delegation expressed a strong reservation concerning the use of the phrase "by a person who has his habitual residence in its territory", which appeared in subparagraph 2(a)(ii). It was a basic principle of Japan's legal system and recognized in its Constitution that elements of offences and related penalties should be clearly defined by law. The phrase "habitual residence" was ambiguous in scope and if it was used as a basis for the mandatory establishment of jurisdiction for offences
established in accordance with article 2, paragraph 1, his delegation would have serious difficulties in accepting it.

59. He suggested that subparagraph 2(a)(iii), in both its versions, should be deleted. Paragraph 2(b) was unnecessary in article 2 bis, in view of the terms of paragraph 3.

60. Mr. BAEVYENS (France) said that his delegation would like to see subparagraphs 2(a)(i) and 2(a)(ii) of article 2 bis maintained. Paragraph 2(a) provided a necessary counterweight to paragraph 1 and to the various requirements which the convention addressed to those States which did not have the possibility of extraditing their nationals and those, like his own and many others, which did. The word “establish” and not “exercise” should be used in paragraph 2(a).

61. The words “or by a person who has his habitual residence in its territory” in paragraph 2(a)(ii) should either be deleted or amended to accommodate the diversity of national legislation in that regard. His delegation would also like to see the deletion of the words “if in both cases the alleged offender is located in its territory”, which duplicated the formula used in paragraph 2(a).

62. Neither version of paragraph 2(a)(iii) should be maintained since both referred to new fields of law in which France did not wish to impose jurisdiction and which did not in any case figure in any other international instrument. His delegation had no objection to paragraph 2(b).

63. Mrs. JONES (United Kingdom) said that her delegation supported the text of article 2 bis, subparagraphs 2(a)(i) and 2(a)(ii) as it appeared in document E/CONF.82/3 and with the words in square brackets deleted. It could agree to the inclusion of subparagraph 2(b) in the article provided it remained an optional provision.

64. It was necessary to ensure that the different legal systems worked in the best way possible to achieve the goal of bringing to justice those guilty of international drug trafficking and assistance arranged at the international level under articles 3 and 5 of the convention would be very helpful in that connection.

65. Extradition also had its part to play. No country wished to become a safe haven for drug traffickers, but every country with the ability in its law to extradite persons had established certain rules and conditions for extradition. For instance, extradition was commonly barred where there was a previous acquittal or conviction, precisely because there could be no prosecution. In such cases there was no point in taking up the time of the prosecuting authorities to consider prosecution. The same applied when the reason for refusal to extradite was that there was no evidence. A blanket obligation to prosecute when there was no extradition would therefore be meaningless. The grounds for refusal had to be examined because they would demonstrate the prospects of pursuing the offender within a given system.

66. The United Kingdom favoured extradition as a means of bringing criminals to justice. Its own criminal jurisdiction was founded on the offence being committed within its territory. She believed that the State where the crime was committed was by far the best place for a person to face trial, and the United Kingdom always favoured extradition in those cases and had no problem whatsoever about extraditing its own nationals for that purpose. It therefore had no need to assume universal jurisdiction although it had done so in special cases of terrorism and hijacking. The United Kingdom did not, however, desire universal jurisdiction for drug trafficking, not because that offence was any less serious, but because the nature of the case load and of the individual cases was so different.

67. It was through extradition and mutual legal assistance under the proposed convention that her country could improve its international contribution to combating drug trafficking offences. Requesting States would not thank the United Kingdom for failure to obtain a conviction in cases where it had not been able to extradite, if the result was that any State which later had an opportunity to prosecute was barred from doing so by the double jeopardy rule triggered by an acquittal in the United Kingdom.

68. Those States which, as a matter of principle, did not extradite their own nationals invariably had jurisdiction on the basis of nationality. It was therefore logical for them to submit the case to their competent authorities for the purposes of prosecution. Those States could then deal with the evidential and procedural problems in the way provided by their own legal system, which presumably allowed extra-territorial prosecution of that kind.

69. In the view of her delegation a universally applicable system of prosecution and jurisdiction could not be achieved through the convention. The constitutional safeguards in the proposal of the Nordic countries (E/CONF.82/C.1/L.23) did not help, because the issue at stake was not constitutional or legal principles but long-established criminal policy, which was unlikely to be modified and was not an obstacle to improved international co-operation in bringing drug traffickers to trial and securing their conviction.

70. Mr. PAREJO GONZALEZ (Colombia) said that article 2 bis, paragraph 2, contained an excess of regulation that would complicate rather than simplify the application of the rules on jurisdiction. Paragraph 1 dealt with the cases over which Parties had jurisdiction. Paragraph 2 listed those cases again but in relation to the refusal of extradition. That provision was too complex, and the words “on any other ground than those specified in subparagraph (a) above” in subparagraph 2(b) were really unnecessary.

71. Since article 2 bis, paragraph 3, together with article 4, paragraph 8, as approved, covered all the circumstances which could possibly arise, article 2 bis, paragraph 2 was redundant and should be deleted, together with the reference to it in article 4, paragraph 8. He
72. Mr. ASSADI (Islamic Republic of Iran) said that the provisions of subparagraph 2(a)(iii) were contrary to the independent jurisdiction of Parties and would be incompatible with the sovereign power of the requesting State. His delegation would therefore like to see the subparagraph deleted. It supported the Colombian proposal to delete article 2 bis, paragraph 2, in its entirety.

73. Mrs. OLIVEROS (Argentina) said that, if the Committee wished to approve article 2 bis as it appeared in document E/CONF.82/3, she proposed the deletion of the square brackets in paragraph 2(a) in order to align the text with that of article 2 bis, paragraph 1, and make it consistent with article 4.

74. Her delegation preferred the second version of subparagraph (iii) but proposed that the word "imposed" should be replaced by the words "provided for" in that text. It agreed with the Colombian representative concerning paragraph 2(b) and was in favour of the amendments submitted by Israel and the Nordic countries, which were much clearer than the text in the draft convention.

75. Mr. XU Hong (China) recalled the observation by the representative of the Netherlands at the eighteenth meeting that paragraph 1(b)(i) and paragraph 2(a)(ii) of article 2 bis should be considered in conjunction. The text of the article was the product of an agreement reached in the Review Group and involved an element of compromise. The two sets of provisions he had referred to were— in a sense—complementary: in the former subparagraph, Parties were to have the option, under certain conditions, of establishing jurisdiction over offences committed by their nationals; in the latter, that establishment would be mandatory when extradition did not take place. Taken together, the provisions went some way towards blocking possible loopholes and ensuring the punishment of offenders.

76. His delegation was not opposed to efforts to make paragraph 2 more concise; but simplification should not take place at the expense of substance. Article 6, paragraph 4, of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, might serve as a model in that connection. Failing adoption of that model, he proposed that the text as it appeared in document E/CONF.82/3 should be approved with the deletion of the word "exercise" in the introductory part of paragraph 2(a). His delegation would prefer to see the first version of subparagraph 2(a)(iii) approved or—if that proved unacceptable to the Committee—then the applicability of the principle aut dedere aut judicare should be clearly established; the second version of subparagraph 2(a)(iii) should be deleted as being an unacceptable reason—in international practice—for the refusal of extradition. His delegation wished to see paragraph 2(b) maintained, preferably, but not necessarily, in an optional formulation.

77. Mr. ERNER (Turkey) said that his delegation could accept article 2, paragraph 2, as it appeared in the draft convention, preferably with the deletion of both versions of subparagraphs 2(a)(iii), and especially of the second one.

78. Mr. ARENA (United States of America) welcomed the Committee's general recognition of the link between article 2 bis and article 4, which embodied one of the most critical elements of the draft convention. The discussion was also bringing to light the differences between legal systems and the vital need for co-operation. His delegation urged the Committee to maintain article 2 bis, paragraph 2(a)(i), as it appeared in the draft convention; it supported the maintenance of subparagraph 2(a)(ii), subject to the deletion of the phrase "or by a person who has his habitual residence in its territory"; and it was strongly opposed to the inclusion in paragraph 2(a) of either of the two subparagraphs (iii).

79. As a basic matter of policy and practice, the United States delegation, and probably many others, had unfortunately to oppose the incorporation in the convention of the notion of mandatory universal jurisdiction. That was not because of difficulty in accepting each sovereign nation's right to recognize the notion of universal jurisdiction, but simply because the nature of its domestic legal system prevented his country from doing so in the present instance. The United States had accepted that notion in a few international instruments—such as those concerning terrorism and hijacking—to which it was a Party; but the number of cases brought to trial under those instruments in recent years was infinitesimally small in comparison with the number of cases brought in respect of offences such as those referred to in article 2 of the present draft convention.

80. He emphasized the seriousness of his country's commitment to vigorous prosecution of traffickers and narcotics offenders wherever possible. Its reluctance to accept the notion of universal jurisdiction did not stem from any desire to allow traffickers to evade the process of justice; his country wished in fact to ensure that offenders were put on trial, sentenced and removed from circulation. The United States believed that that objective could most effectively be achieved by conducting trials in the place where the greatest harm flowed from the criminal acts in question and in the place where the best case could be made: those conditions seemed to be combined in the place where the offence was committed.

81. Some speakers had mentioned the difficulties which might arise when a case had to be brought under a legal system other than that which had established the offence. Personal experience as a prosecutor had taught him that those difficulties proved in many cases virtually insuperable. In such circumstances acquittal of the suspect was highly probable. Such an outcome would not please the country which had endeavoured to ensure that the offender was brought to justice.

82. His delegation considered it fundamentally unfair and wrong that a person should be able to enter a country, break its laws and cause harm there, and then move abroad and conceivably go free because of differences in legal procedure. If all countries had the same legal system,
cases could be transferred from one country to another with the same facility as was currently enjoyed by drug traffickers in their movements.

83. Those States which were fortunate enough to have common legal systems on a bilateral, multilateral or regional basis could "trade" cases. It was perhaps not fortuitous that the countries which did not extradite their nationals, had extra-territorial jurisdiction and based their jurisdiction both on territoriality and nationality were those which had the least difficulty with the notion of universal jurisdiction and with the introduction into conventions such as the present one of notions expressed in other multilateral agreements. On the other hand, the United States and those countries which did extradite their nationals and which based their jurisdiction essentially on territoriality, had to oppose the notion of universal jurisdiction, especially when imposed in mandatory fashion.

84. In short, the requirement was for co-operation between different legal cultures. He applauded the efforts of all delegations at the Conference to reach effective compromises and to recognize and respect each other's differences, in the interests of the strongest, most effective convention possible. The United States delegation asked for the same kind of understanding in the present discussion as had been seen at the previous meeting when the Committee had considered the differences between the United States system of discretionary prosecution and systems of mandatory *ex officio* prosecution. There was no desire on his delegation's part to remove from any State the obligation—if its legal system so required—to bring a case for prosecution once the facts were present. The United States merely asked to be given the opportunity of retaining its own system and of consulting with others when conflicts between extradition and prosecution arose.

85. His delegation could not support paragraph 1(a)(iv) in the amendment submitted by Israel (E/CONF.82/C.1/L.24); nor could it agree to paragraph 1(b)(iv) in the amendment submitted by the Nordic countries (E/CONF.82/C.1/L.23), because the safeguard clause they contained was insufficient.

86. It supported the deletion of the reference in paragraph 2(a)(ii) of the draft convention to habitual residence, not only because it was vague, but because it might well lead to the proliferation of havens for drug traffickers.

87. His delegation considered it inconsistent for a State to have the right of non-extradition of its nationals, and at the same time to accord the right not to extradite habitual residents. Those provisions, combined, could set a double barrier in the paths of States which sought to bring their nationals to justice. Indeed, an individual under such circumstances could conceivably shuttle between countries, maintain residences in each of them, and avoid extradition from any of them on the basis either of nationality or of habitual residence.

88. So far as the proposed deletion of the whole of article 2 *bis*, paragraph 2, was concerned, he submitted that that would effectively create universal jurisdiction. That was something his delegation would be unable to countenance.

89. Mr. SCHUTTE (Netherlands) said that his position was virtually identical with that of the representative of France. He merely wished to add that, for the sake of consistency and in accordance with the earlier amendment made to paragraph 1(a)(ii), the first part of paragraph 2(a)(i) should read "that the offence has been committed in its territory or on board a ship flying its flag or aircraft...".

90. With reference to the remarks of the representative of Japan he wondered whether the latter agreed that there might be a difference between a ground for refusal to extradite based simply on the fact that the offence was considered to have been committed within the territorial jurisdiction of the requested Party, and a ground for refusal where the requested Party deemed the claims of the requesting Party to exercise jurisdiction in a particular case to be exorbitant.

91. His delegation would not object to the maintenance of subparagraph 2(b), although that subparagraph seemed to duplicate the provision in paragraph 3.

92. Mr. YAHIAOUI (Algeria) said that his delegation had not, early in the meeting, sought a reopening of the discussion on article 4, paragraph 8. However, in view of the difficulties which arose in connection with article 2 *bis*, paragraph 2, he now believed it would be preferable, in the interest of achieving a consensus on article 4, paragraph 8, not to include in that paragraph a reference to article 2 *bis*, paragraph 2. Without prejudice to the outcome of the discussion of the latter paragraph, the Algerian delegation, while desirous of contributing as far as possible to the development of an effective international convention, wished its reservation concerning article 4, paragraph 8, to be recorded. It favoured the deletion of article 2 *bis*, paragraph 2.

93. Mr. METAXAS (Greece) supported the deletion of the reference to habitual residence in paragraph 2(a)(ii), and of both versions of paragraph 2(a)(iii), in the text of the draft convention.

94. Mrs. KATHREIN (Austria) said that her country had no difficulty with the notion of universal jurisdiction. Her delegation could approve article 2 *bis*, paragraph 2, subject to the deletion of "[exercise]" in the introductory part of subparagraph 2(a): the deletion of all the words after "By a national" in subparagraph (a)(ii); and the deletion of both proposed variants of subparagraph (a)(iii). Her delegation could also approve subparagraph 2(b) as a pendant to paragraph 3.

95. Mr. POPOV (Bulgaria) said that in dealing with article 2 *bis*, paragraph 2, the Committee was faced with a very serious problem, in view of the different opinions and positions of delegations and the conflict between different legal systems.
96. The Bulgarian delegation had finally reached the conclusion that the best course for the Committee to adopt was simply to expunge article 2 bis, paragraph 2, from the draft convention.

97. Mr. AL-OZAIIR (Yemen) supported the proposal to delete both of the versions of subparagraph 2(a)(iii). He even wondered whether subparagraph 2(a)(ii) was necessary, since States could surely be relied upon to impose penalties in the cases referred to, especially where their nationals were concerned.

98. Mr. WILKITZKI (Federal Republic of Germany) said that he could not agree with the Bulgarian representative’s proposal. Article 2 bis, paragraph 2, contained some of the most important provisions of the draft convention. Personal experience had taught him that it was impossible to have effective prosecution in the absence of sufficient jurisdiction in cases where extradition was not granted. He consequently supported most strongly, and as a minimal inclusion in the text, paragraph 2(a) in a mandatory formulation and with the word “exercise” deleted.

99. He had no objection to the substance of subparagraphs 2(a)(i) and 2(a)(ii) but, having listened to the representative of Japan, thought that their inclusion in the article was perhaps not absolutely necessary: subparagraph 2(a)(i) appeared to reiterate what was stated in subparagraphs 1(a)(i) and 1(a)(ii), while subparagraph 2(a)(ii) seemed to be of limited application.

100. The second proposed variant of subparagraph 2(a)(iii) might be more useful than the first and allay concerns expressed by the representative of the Islamic Republic of Iran, if it were formulated in the manner suggested by the representative of Argentina.

101. Article 2 bis, paragraph 2(b), had far-reaching implications, even for countries—such as his own—whose jurisdiction was broadly based; if it were retained, it should be in the form of an optional provision.

102. The CHAIRMAN, referring to the suggestion that paragraph 2, as a whole, should be deleted, said that many of the Committee’s greatest difficulties had arisen as a result of proposals “simply” to delete elements of the original draft. His understanding of the present situation was that a number of delegations, wishing to expand the scope of application of the principle "aut dedere aut judicare", preferred that no specific relevant grounds for refusal of extradition be singled out as calling for the application of that principle. On the other hand, some delegations had expressed themselves in favour of keeping certain specific references in the text, thereby limiting the scope of "aut dedere aut judicare."

103. There appeared to be two types of circumstance in respect of which there was no substantial disagreement in the Committee: where the offence was committed by a national; and where the offence was committed in the territory of the State concerned. Those circumstances might therefore be set aside for explicit mention as subject to application of the principle "aut dedere aut judicare" when extradition was refused. Then, to satisfy the desires of those who wished that principle to be extended, a broader reference might be made, along the lines suggested in the amendments of Israel (E/CONF.82/C.1/L.24) and the Nordic countries (E/CONF.82/C.1/L.23). To make that broad provision mandatory, however, would provoke some opposition on the part of those who wished the scope of "aut dedere aut judicare" to be circumscribed. The provision might be qualified by a safeguard clause which could take the form of an expanded version of that contained in the Nordic amendment, or of introductory wording to indicate that the provision was discretionary. He had no formal proposal to make, but merely wished to set those ideas before the Committee for consideration.

The meeting rose at 6.12 p.m.

22nd meeting
Friday, 9 December 1988, at 10.25 a.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 bis, paragraph 2 (continued) (E/CONF.82/C.1/L.23)

1. The CHAIRMAN invited the Committee to continue its discussion of article 2 bis, paragraph 2.

2. Mr. SHING (Mauritius) said that the Committee should attempt to reach consensus on the basic text. Despite the understandable objections of some delegations to the idea that the convention should allow the extradition of offenders to countries which imposed the death penalty, he could not see why extradition should be refused merely on the grounds that an offender might suffer a stiffer penalty in the country to which his extradition was sought. His delegation approved paragraph 2 as proposed in the basic text, subject to reservations which it had in regard to the second version of paragraph 2(a)(iii).
3. Mr. AL-SHARARDA (Jordan) said that his country could not consider allowing the extradition of a person to countries in which a more severe penalty was imposed for a like offence. That could only lead to offenders intensifying their efforts to flee from such countries. Jordan did in fact impose severe penalties for drug offences. He proposed the deletion of paragraphs 1 and 2 and their replacement by the following words: "Each Party may refuse extradition if the legal grounds for extradition have not been satisfied."

4. Ms. HUSSEIN (Malaysia) said that the aim of article 2 bis, paragraph 2, was to ensure that drug offenders did not go scot free merely because the requested Party entertained moral scruples in regard to their extradition. She had noted the grounds put forward at the previous meeting by the delegations of the United Kingdom and the United States for not accepting the notion of universal jurisdiction (E/CONF.82/C.1/SR.21, paras. 63-69, 78-88). Yet paragraph 2 was concerned with the establishment of jurisdiction and would not make its exercise mandatory. The exercise of the right to prosecute would still be governed by the domestic law of the State in question. She therefore reiterated her support for sub-subparagraphs (i) and (ii) of paragraph 2(a), but she had reservations with regard to the reference to habitual residence. She had no objection to the wording of paragraph 2(b), but if some States were unable to accept it on constitutional grounds, she suggested that it might be replaced by paragraph 1(b)(iv) of the Nordic countries' amendment (E/CONF.82/C.1/L.23).

5. The CHAIRMAN said that at the previous meeting discussion had taken place about the inclusion of the notion of exercise in the introductory wording to paragraph 2(a). The Committee had already decided to exclude it from paragraph 1 (E/CONF.82/C.1/SR.18, paras. 42, 78). It was reasonable to assume that it would take the same decision with regard to the introductory wording to paragraph 2(a).

6. Mr. BOBIASZ (Canada) said that his delegation's views had largely been covered by the statements made by the United Kingdom and the United States at the previous meeting. In essence, his delegation approved sub-subparagraphs (i) and (ii) of paragraph 2(a) but could not accept either variant of sub-subparagraph (iii). It approved paragraph 2(b).

7. Mr. CAPEK (Czechoslovakia) said that two conventions relevant to the present subject of the Committee's discussion—the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft and the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation—might provide a way out of the difficulties at present facing the Committee. A radical solution to the problem would be to omit paragraph 2 altogether, and he himself would have no objection to that course, but it would be unlikely to receive general approval. The two conventions he had mentioned, which had been concluded for the prevention of hijacking, made clear the important point that jurisdiction had to be established before it could be exercised. The division of jurisdiction into mandatory and optional categories was provided for in the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, which in that connection referred to a "national" of the State establishing jurisdiction and did not include the notion of habitual residence.

8. Whereas all the above international conventions were based on the principle aut dedere aut judicare and imposed mandatory jurisdiction where the alleged offender was not extradited, the present draft opted for facultative jurisdiction in paragraph 2(b) in conflict with that principle. The provision in paragraph 3 of article 2 bis was to be found in many other multilateral instruments and could therefore be accepted. He proposed the use throughout the article of the term "establish its jurisdiction", not "exercise its jurisdiction" and the formulation of paragraph 2 as an obligatory provision in the following terms: "Each Party shall also take such measures... if it does not extradite the alleged offender." Paragraph 3 was acceptable as proposed in the basic text.

9. Mr. OUCHARIF (Morocco) pointed out that article 2 bis was entitled "Jurisdiction" and might accordingly be held to cover national, regional and universal jurisdiction. Those types of jurisdiction were covered in the subparagraphs of paragraph 1. The notions of the territoriality or regionality of an offence would enable an alleged offender to be prosecuted for an offence committed outside the State establishing jurisdiction, but such prosecution could be either mandatory or facultative. Paragraph 2 had been included in the article to enable measures to be taken if extradition was refused, although it was not clear what place that provision had in an article entitled "Jurisdiction". It was not so much a question of the formulation of paragraph 2 but the very fact of its inclusion in an article on jurisdiction that was incorrect. That was why his delegation favoured the Nordic countries' amendment (E/CONF.82/C.1/L.23), which worded the paragraph in such a way as to avoid that pitfall. However, the reference in paragraph 1(b)(i) of that proposal to jurisdiction in relation to an offence committed by a national or habitual resident in the State establishing jurisdiction should be amended to refer to nationals only. Paragraph 2 of the basic text was unacceptable.

10. He wished to stress that drug offences were international crimes and should be subject to universal jurisdiction on a mandatory basis.

11. Mrs. PONROY (France) said that paragraph 2(a)(i) was acceptable but of little practical value, since it duplicated paragraph 1(a). The provision in paragraph 2(a)(ii), on the other hand, was important and should be included, since the requirement in paragraph 1(b)(ii) was only optional. Like other delegations, she opposed mentioning the notion of habitual residence—unknown in civil law countries—as a ground for jurisdiction.

12. Mr. SCHUTTE (Netherlands) pointed out that sub-subparagraphs (i) and (ii) of paragraph 2(a) dealt with grounds for refusal of extradition, whereas paragraph 1 dealt with jurisdiction. The connection between the two
was made in article 4, paragraph 8, which required the submission of cases to the competent authorities for prosecution if extradition had been refused. Paragraph 2 made it clear that, where extradition had been refused on grounds of nationality or territoriality, jurisdiction had to have been established previously by the State refusing to extradite the alleged offender. Although there was a similarity between paragraph 1(a) and paragraph 2(a)(i), as the representative of France had observed, the former related to the establishment of jurisdiction and the latter to its exercise.

13. Mr. JENKINS (Australia) said that his delegation favoured paragraph 2(a) without either formulation of subparagraph (iii). It could also accept paragraph 2(b) if it was formulated in general terms. Basically, his views on the matter were in line with those expressed by the representatives of the United Kingdom and the United States at the previous meeting.

14. Mr. MADDEN (Jamaica) said the aim of paragraph 2 was to ensure that if a Party refused to extradite an alleged offender, it must previously have established jurisdiction to prosecute him, the obligation to prosecute being provided for in article 4, paragraph 8. On that basis he accepted paragraph 2(b), but would like to see both variants of subparagraph (a)(iii) omitted. He approved the optional formulation of paragraph 2(b), but pointed out that some grounds for the refusal of extradition might also constitute grounds for refusal to prosecute. Neither the establishment or exercise of jurisdiction nor the notion of habitual residence afforded his delegation any difficulty.

15. Mr. OSHIKIRI (Japan) said that he would not call for the deletion of paragraph 2(a)(i), but he was uneasy about the differences between paragraphs 1 and 2. As he understood it, paragraph 2(a)(i) related to the establishment of jurisdiction, whereas the obligation to exercise jurisdiction was covered in article 4, paragraph 8.

16. Mrs. VEVIA (Spain) said that, although paragraphs 1(a) and 2(a)(i) of the basic text had initially appeared to be unduly repetitive, the explanation given by the representative of the Netherlands had convinced her that the underlying logic of the article was sound. The inclusion of the notions of nationality and habitual residence presented no problem to Spain, but she understood the objections raised to it by some other delegations.

17. Mr. LIEBERT (Papua New Guinea) favoured the wording proposed in the basic text for paragraph 2, but without the word “exercise” and with the idea proposed in paragraph 2(a)(iii) added to paragraph 2(b). It had to be borne in mind that achieving the aim of the convention—to prevent drug offenders from escaping justice—would depend partly on the goodwill of the Parties and partly on the resources available to prosecute offenders. Simply because the convention gave poor countries universal jurisdiction did not mean that they would have the considerable resources required to obtain evidence worldwide and prosecute offenders who were nothing more than international criminals, and had therefore forfeited any right to protection on grounds of nationality.

18. Mr. MULAT (Ethiopia) approved sub-subparagraphs (i) and (ii) of paragraph 2(a) as proposed in the basic text but would like to see sub-subparagraph (iii) deleted. Paragraph 2(b) might be included in the article provided it kept its optional formulation.

19. Mr. SAMIA (Libyan Arab Jamahiriya) said that his delegation found difficulty in accepting paragraph 2 of article 2 bis as proposed in the basic text, especially in respect of mandatory jurisdiction in cases where extradition had been refused. His delegation supported the Nordic countries’ amendment (E/CONF.82/C.1/L.23).

20. Mr. AL-NOWAISER (Saudi Arabia) favoured the deletion of paragraph 2 from article 2 bis. All the jurisdictional matters dealt with in it were already covered by article 3. If, however, the Committee decided to include the paragraph, his delegation would urge that it did so on the basis of the wording appearing in paragraph 1(b)(iv) of the proposal submitted by the Nordic countries (E/CONF.82/C.1/L.23). His delegation believed that the Committee should take a decision on paragraph 1(b)(iii) before deciding on paragraph 2.

21. Mr. GONZALEZ FELIX (Mexico) said that his delegation could accept subparagraph (a)(i), and also sub-subparagraph (a)(ii) if the words “or by a person who has his habitual residence on its territory” were deleted from it. Subparagraph (a)(iii) should be dropped. Neither of the two alternative texts for it was acceptable to his delegation, which believed that extradition should be granted or refused in pursuance of the relevant bilateral treaties, not the convention under discussion; the question of the severer penalties and the death penalty was of course dealt with in bilateral extradition agreements.

22. Lastly, his delegation favoured including paragraph 2(b) in the draft, provided that it was couched in optional terms.

23. The CHAIRMAN noted that a number of delegations favoured the version of paragraph 2 which appeared in the basic text. Others preferred the Nordic countries’ text (E/CONF.82/C.1/L.23). Certain delegations wished paragraph 2 to mention specific circumstances in which refusal of extradition would serve as the basis for establishing jurisdiction; in that connection, objections had been raised to the reference in subparagraph (a)(ii) to “a person who has his habitual residence” as well as to both variants of subparagraph (a)(iii).

24. As to paragraph 2(b), the choice appeared to be between optional wording beginning with the word “may” and a proviso worded like the introduction to the paragraph 1(b) proposed in document E/CONF.82/C.1/L.23.

25. Mr. LAVIÑA (Philippines) observed that the proposal to delete paragraph 2 and the proposal put forward in document E/CONF.82/C.1/L.23 constituted two
contradictory propositions; they should not therefore be considered together.

26. Mr. VICTOR (Sweden) said that, in the interests of promoting a consensus, his delegation could accept paragraph 2(a) of the basic text if the reference to habitual residence was deleted from subparagraph (a)(ii) and subparagraph (a)(iii) eliminated altogether.

27. Mr. ERNER (Turkey) said that he too could accept that solution. However, the Committee had already accepted a reference to habitual residence in paragraph 1(b)(i).

28. The CHAIRMAN said that the question of consistency on that point might be examined at a later stage.

29. He invited the Committee to examine paragraph 2(b) of the basic text. In the circumstances which paragraph 2(b) contemplated, the Party concerned might, under the basic text, establish its jurisdiction over the offences in question. The same circumstances were specified in paragraph 1(b)(iv) of the proposal in document E/CONF.82/C.1/L.23, but that proposal used the word “shall” and made the provision subject to a safeguard. The choice lay between that formula and the optional one represented by the basic text.

30. Mrs. PONROY (France) said that she could accept paragraph 2(b) in the optional form in which it appeared in the basic text. As to the safeguard wording at the beginning of paragraph 1(b) of the text in document E/CONF.82/C.1/L.23, she failed to see the point of the words “subject to its constitutional limitations and the basic principles of its legal system”. Very many bilateral and multilateral conventions contained a provision similar to the one in paragraph 2(b) and had been duly ratified.

31. Had the provisions in question conflicted with the constitutional or other basic principles of national legal systems, those instruments would not have been so readily accepted. So far as France was concerned, the safeguard wording had no meaning.

32. That wording had, however, rightly been included in draft article 2, concerning the definition of criminal offences, which dealt with matters of substance capable of entering into conflict with constitutional or fundamental legal provisions, but the rules in draft article 2 bis related to procedure. It should also be remembered that the limits of extraterritorial jurisdiction were laid down by international law, not by constitutions or the basic principles of national legal systems.

33. Mr. AL-NOWAISER (Saudi Arabia) said that his delegation would like to see paragraph 2 deleted but would not insist on that if paragraph 2(b) retained its optional form. With regard to the wording, he was not satisfied with the expression “alleged offender” in paragraph 2, which should be replaced by the word “accused” or the words “person charged”.

34. The representative of Malaysia had alluded to the distinction between the obligation to establish jurisdiction and discretion to prosecute. There was certainly no reason to oblige a State to take useless proceedings.

35. Mrs. OLIVEROS (Argentina) said that article 2 bis dealt with two quite distinct cases of jurisdiction. Paragraph 1 set forth the various situations in which a Party was required to establish its jurisdiction. Paragraph 2, on the other hand, dealt with the various situations in which extradition was refused. It was desirable to keep the discussion of those two sets of provisions separate. Thus, for example, the reference to “a person who has his habitual residence in its territory” should be deleted from paragraph 2(a).

36. Mr. TIYAPAN (Thailand) said that the purpose of paragraph 2 was to ensure the conviction of a drug trafficker wherever and whenever possible. His delegation therefore approved the basic text, subject to the deletion of sub-subparagraph (iii) and of the reference to habitual residence.

37. Mr. SCHUTTE (Netherlands) said that, like the French representative, he could not accept the proviso at the beginning of paragraph 1(b) of the text in document E/CONF.82/C.1/L.23. Paragraph 2 as proposed in the basic text dealt with offences established in accordance with article 2, paragraph 1. Those offences included laundering offences. His delegation could not possibly accept a text which contained an exhortation to establish jurisdiction in regard to laundering offences. The same was true of the other States members of the European Economic Community, which incidentally included Denmark. Most of those States had had occasion to protest, on the basis of the general principles of international law, against the adoption by other States, in respect of such offences, of jurisdictional measures which had far-reaching extraterritorial effects.

38. Reverting to the question of the safeguard wording forming the introduction to paragraph 1(b) as proposed in document E/CONF.82/C.1/L.23, he said that a similar formulation existed in article 36, paragraph 2, of the 1961 Single Convention on Narcotic Drugs and also in article 22, paragraph 2, of the 1971 Convention on Psychotropic Substances. The provisions of those conventions could not therefore serve as an argument for establishing criminal jurisdiction for all offences set forth in article 2, paragraph 1. He concluded that the optional wording of paragraph 2(b) as proposed in the basic text should be approved.

39. Ms. HUSSEIN (Malaysia) said that her delegation could accept sub-subparagraphs (i) and (ii) of paragraph 2(a) of the basic text.
40. Mr. OUCHARIF (Morocco) said that the concept of universal jurisdiction, which had inspired the amendment in document E/CONF.82/C.1/L.23, was not at present accepted in his country. It had, however, taken one step in that direction when it had exercised jurisdiction over an offence committed on board an aircraft which had subsequently landed at a Moroccan airport. The wording of the proposal for paragraph 1(b) in document E/CONF.82/C.1/L.23 was not, however, mandatory since it was qualified by the opening proviso “subject to its constitutional limitations and the basic principles of its legal system”.

41. Mr. WOTAVA (Austria) supported the arguments put forward by the French and Netherlands delegations. He accordingly urged that the word “may” should appear as the opening word of paragraph 2(b) as proposed in the basic text.

42. The CHAIRMAN asked the committee whether a consensus could be reached on the wording for article 2 bis, paragraph 2, which would result from making the following changes to the basic text: first, the word “exercise”, the square brackets around it and the square brackets around the word “establish” would be deleted from the introductory wording to paragraph 2(a); secondly, the words “flying its flag” would be inserted after the word “ship” in subparagraph (a)(i), in order to ensure consistency with the wording of paragraph 1(a)(ii) of article 2 bis approved by the Committee on the proposal of the German Democratic Republic (E/CONF.82/C.1/L.22); thirdly, subparagraph (a)(ii) would be shortened to read: “(ii) that the offence has been committed by a national”; fourthly, subparagraph (a)(iii) would be deleted; fifthly, in paragraph 2(b), the square brackets enclosing the provision, the word “exercise”, the square brackets around it, those around the word “establish” and the words “on any other ground than those specified in subparagraph (a) above” would be deleted.

43. With regard to the suggestion to replace the term “alleged offender” by the words “accused” or “person charged”, he pointed out that the Committee had already accepted the term “alleged offender” in connection with article 4, paragraph 8.

44. Mr. LAVÍÑA (Philippines) said that he would join a consensus on the text proposed by the Chairman, but placed on record his reservations regarding paragraph 2(a)(ii). He recalled the strong reservations his delegation had expressed regarding paragraph 1(b)(i).

45. Ms. HUSSEIN (Malaysia) placed on record her delegation’s reservations regarding paragraph 2(b). Her delegation favoured the use of safeguard wording in regard to the contents of that paragraph.

46. Mrs. OLIVEROS (Argentina) said that her delegation would prefer the provisions of paragraph 2(b) to be mandatory, but in the interests of reaching a consensus it would accept the optional formulation.

47. Mrs. VEVIA (Spain) said that, in the interests of reaching a consensus, she accepted the text proposed by the Chairman.  

48. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee accepted by consensus the text which he had just proposed for article 2 bis, paragraph 2.

49. It was so decided.

Article 4, paragraph 8 (continued)

50. The CHAIRMAN said that the text before the Committee was the following: “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)], subject the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party.”. The reason for the square brackets was that article 2 bis had not been approved at the point in the discussion at which the Committee had earlier considered the wording he had just read out.

51. Mr. VICTOR (Sweden) proposed that the word “solely” should be inserted before the words “on the grounds” to make it clear that, if there were grounds other than those set out in article 2 bis, paragraph 2(a), for not extraditing the alleged offender, nationals and non-nationals could be treated alike.

52. Mr. WILKITZKI (Federal Republic of Germany) supported that suggestion and proposed that the text should be approved in that form. He thought, however, that the text should also refer to paragraph 2(b) of article 2 bis, which was an optional provision; if a Party had established jurisdiction under that provision, it should be required to exercise it.

53. Mrs. PONROY (France) supported by Mr. SCHUTTE (Netherlands), Mr. GONZALEZ FELIX (Mexico) and Mr. AL-NOWAISER (Saudi Arabia) supported the text as amended by Sweden.

54. Mrs. VEVIA (Spain) said that she too approved the text as amended by Sweden. To add a reference to paragraph 2(b) of article 2 bis would create an imbalance between the obligations of Parties which took measures under that paragraph and those which did not.

55. Mr. YAHIAOUI (Algeria) asked if the words “alleged offender” referred solely to the perpetrator of an offence established in accordance with article 2, paragraph 1.

56. The CHAIRMAN replied that the English version of the text implied that. He suggested that the Drafting
Committee might ensure that the other language versions reflected that fact.

57. Mr. OUCHARIF (Morocco) commended the Chairman on his patience and on his wisdom in dealing with article 4, paragraph 8, in a manner in which a compromise could be achieved. He pointed out that if a national—referred to in paragraph 2(a)(ii) of article 2 bis—committed an offence on the territory of a Party—a situation contemplated in paragraph 2(a)(i) of article 2 bis—article 4, paragraph 8, would oblige the Party to submit the case to its competent authorities. It should, however, be obvious that an offence committed by a national of a Party on the territory of that Party was a matter for the Party's competent authorities in the first instance. In that sense, article 4, paragraph 8, was irrelevant and meddlesome, for a Party could not sensibly be required to order its competent authorities to do something which they would do in any case.

58. Mr. LOW MURTRA (Colombia) said that the words in square brackets were unnecessary and also restrictive, the more so if the word "solely" was added. As it stood, the reference to paragraph 2(a) of article 2 bis weakened the _aut dedere_ element in article 4, paragraph 8, and the word "solely" did the same to the _aut judicare_ element, resulting in that very impunity which the convention should prevent. He therefore proposed that the words in question should be deleted.

59. Mrs. OLIVEROS (Argentina) concurred with the previous speaker. The obligation which paragraph 8 established was already qualified, and if the words in square brackets were maintained, the paragraph as a whole would not be worth the paper it was written on.

60. Mr. LAVIÑA (Philippines) supported the proposal to delete the words in square brackets, which were restrictive; the addition of the word "solely" would render them meaningless.

61. Mr. OSHIKIRI (Japan) raised a logical objection to the deletion proposal: the paragraph related to the exercise of jurisdiction, and to be exercised, jurisdiction had first to be established. The establishment of jurisdiction was provided for in article 2 bis, and deleting the reference to that article could therefore prevent the exercise of jurisdiction.

62. Mr. WILKITZKI (Federal Republic of Germany) said that he appreciated the desire expressed by the representatives of Colombia, Argentina and the Philippines to strengthen the _aut dedere aut judicare_ obligation in article 4, paragraph 8. However, deleting the words in square brackets would not achieve that end; it would simply create a general obligation to submit cases to the competent authorities, but to no avail, since those authorities would find that they had no jurisdiction to hear them. He wished the paragraph to contain the proposed reference to paragraph 2(a) of article 2 bis but not a reference to paragraph 2(b) of that article.

63. The CHAIRMAN said that the conflicting views expressed in the Committee with regard to the wording in square brackets might perhaps be reconciled by replacing it by the following clause: "when that Party has established its jurisdiction in relation to such an offence in accordance with article 2 bis, paragraph 2." That would, he thought, both strengthen the provision by maximizing the number of cases which could be submitted to the competent authorities of a requested Party and at the same time establish the jurisdiction necessary for them to deal with those cases. Where a Party had chosen not to take measures under article 2 bis, paragraph 2(b), paragraph 8 of article 4 would of course not apply.

64. Mr. SCHUTTE (Netherlands) said that he was unable to accept the wording just suggested by the Chairman. The Netherlands could not establish extraterritorial jurisdiction on grounds other than that of nationality. Its respect for States whose domestic legislations allowed them to do so was not thereby diminished, but it could not accept an international instrument which obliged it to emulate them. Up to and including the words "domestic law", the original wording for paragraph 4 of article 8 read out by the Chairman at the present meeting was right and proper, since it allowed a Party to exercise its jurisdiction, of any degree of extraterritoriality, in accordance with that law; the proposed change, however, would constitute an unjustified interference with domestic law in that a Party would be obliged to establish extraterritorial jurisdiction which might conflict with that law. An obligation of that kind was alien to public international law.

65. Mr. OUCHARIF (Morocco) supported the new wording suggested by the Chairman. Those who feared interference with their domestic legislation need not do so, because the application of the paragraph was without prejudice to domestic law. Moreover, article 2 bis, paragraph 2(b) was an optional provision.

66. Mr. XU Hong (China) also supported the new wording, and agreed with the Chairman's analysis of its effect. The part of article 2 bis, paragraph 2, relating to extraterritorial jurisdiction was optional. If a Party, because of the limitations set by its domestic law, was unable to establish extraterritorial jurisdiction, it would not be obliged to exercise it. If, on the other hand, it had established such jurisdiction, it would be obliged to do so. The suggested wording was therefore well aligned with article 2 bis and would not impose any additional obligation on Parties.

_The meeting rose at 1 p.m._
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4, paragraph 8 (continued)

1. Mr. LOW MURTRA (Colombia) said that, in a desire to help bring a long and arduous debate to a conclusion, he would support the Chairman’s proposed reformulation of the text of article 4, paragraph 8.

2. Mr. STEWART (United States) said that, for the reasons given earlier by the representative of the Netherlands, his delegation was unable to agree to the Chairman’s proposed reformulation of paragraph 8. He supported the Swedish representative’s proposal to insert the word “solely” before the words “on the grounds”.

3. Mr. MADDEN (Jamaica) said that it seemed that in article 2 bis, paragraph 2(b), the convention would be stating more or less what the situation would be in practice, given the fact that a State could exercise its criminal jurisdiction only if it had established jurisdiction over the offence by virtue of article 2 bis. He understood the obligation imposed by article 4, paragraph 8, was to submit the case to the competent authorities for the purpose of prosecution to mean submission of the case to the competent authorities for the purpose of making a decision on prosecution. A decision made in favour of prosecution should be followed through. If in given circumstances it was felt that jurisdiction had not been established there would then be no matter to prosecute. If the intention was to deal with a situation under article 2 bis, paragraph 2(a), which concerned nationality or territoriality, the State would have had to take the necessary measures in any event. A State was not obliged to establish other bases of jurisdiction in the case where it had not extradited the person sought, and there would be no case to submit, simply because the State would not have established jurisdiction.

4. In the present discussion the Committee was dealing with an area where countries must demonstrate their will to make the convention work in practice. The intention should not be to compel countries to go to court even if they had a weak case. There might be grounds on which it was inadvisable to go to court and others where it was absolutely essential to do so. He had accepted the text proposed for article 2 bis, paragraph 2(b), on the understanding that the word “when” before the words “the alleged offender” had no connotation of time.

5. Mr. AL-MUBARAKI (Kuwait) said that the Committee had agreed to a text for article 2 bis, paragraph 2(b), which made the provision optional and imposed no obligation. The Chairman’s proposed reformulation was flexible in that it enabled countries which refused to accept universal jurisdiction to adopt laws that established jurisdiction under article 2 bis, paragraph 2(b); it also gave the right to establish jurisdiction under article 4, paragraph 8, or not to establish jurisdiction, in which case there would be no obligation. His delegation supported the Chairman’s proposal.

6. Mr. GONZALEZ FELIX (Mexico) said that the difficulties experienced by the Committee were due to the original drafting of article 4, paragraph 8, in document E/CONF.82/3, having regard to the fact that some countries could not agree to the extradition of their nationals. The effects of the draft convention had not been fully foreseen. Some countries did not have the facility under their domestic law to establish jurisdiction and his delegation had difficulty with the notion of “habitual residence”. It was not simply a question of establishing extraterritorial jurisdiction, but of knowing what the practical effects of such jurisdiction would be. It was important, in his view, to maintain the fragile balance between the various viewpoints which had been achieved during the last few meetings of the Committee.

7. Mrs. JONES (United Kingdom) associated herself with the Mexican representative’s remarks. She preferred the text of article 4, paragraph 8, as it had been before the Committee had begun to consider article 2 bis, paragraph 2. However, she supported the Swedish proposal to insert the word “solely” before the words “on the grounds” in the phrase in brackets.

8. Her delegation now considered that the phrase in brackets should be maintained. Paragraph 8 dealt only with the obligation to submit a case to the competent authorities in one circumstance, namely where an extradition request had been made and refused on one of the grounds set forth in article 2 bis, paragraph 2. The opening words of the paragraph made it quite clear that Parties which wished to have or already had the option of jurisdiction referred to in article 2 bis, paragraph (b) remained free to exercise that jurisdiction. In fact, some delegations had indicated that under their domestic law they would be obliged to do so.

9. Mr. OSHIKIRI (Japan) said that he supported the insertion of the word “solely” before the words “on the grounds” in article 4, paragraph 8. He also accepted the new formulation for the paragraph proposed by the Chairman, although its phrasing might perhaps be made more precise. That text should not be interpreted as permitting a Party to avoid or escape an obligation to submit the case to the competent authorities if it was not extraditing an alleged offender.
10. Mrs. HUSSEIN (Malaysia) said that her delegation supported the new formulation proposed by the Chairman.

11. Mr. TIYAPA (Thailand) said that the aim should be to punish drug offenders wherever they might be. It was essential that those countries which refused extradition on the ground that they had established jurisdiction under article 2 bis, paragraph 2(a), should punish the offender or at least submit him to the competent authorities. He supported the Chairman's new formulation.

12. Mr. SCHUTTE (Netherlands) said that the difficulty was that the Committee was discussing matters where the principles of national sovereignty and non-interference in domestic affairs were involved. In virtually all cases criminal jurisdiction was exercised in practice on the basis of territoriality. The exercise of extraterritorial jurisdiction was very rare and not always successful. His delegation believed that it was not only appropriate but was even the essential that everything should be done to enable States whose legal extradition existed for that purpose. He believed that it was very rare and not always successful. His delegation believed that it was not only appropriate but was even the essential to extradite wherever they might be. It had sought a middle way between the ground that they had established jurisdiction under article 2 bis, paragraph 2(a), should punish the offender or at least submit him to the competent authorities. He supported the Chairman's new formulation.

13. His delegation wished to see extradition made as flexible as possible and the grounds for refusal to extradite limited to the greatest possible extent. It had suggested that the fact that an offence was of a political or fiscal nature should not be an acceptable ground for refusal to extradite under the convention. His country was prepared in certain circumstances to extradite Netherlands nationals. A provision along the lines of article 4, paragraph 9, might be added to paragraph 8 to cover the situation where States might not be in a position to submit cases for prosecution to their competent authorities if the person whose extradition had been refused had already been convicted but had not fully served his sentence.

14. The convention should not create situations where States might feel that their sovereign rights were being diminished and that their territorial integrity was being affected in any way. It should also not create a situation which, under the Netherlands double jeopardy law, for example, would make it impossible to deal with a case more than once. The Netherlands delegation did not oppose the right of any State to establish whatever jurisdiction it wished under domestic law. It was, however, opposed to the creation of an international instrument which imposed on States an obligation to exercise a particular kind of jurisdiction even in situations where in its view it was inappropriate for them to do so.

15. It was important that the obligation under article 8, paragraph 4, should refer only to cases where the Conference recognized the claim of a requested State to exercise jurisdiction itself to be valid, in other words where the claim was based either on the territorial jurisdiction of the requested State itself, or on a jurisdiction based on the nationality of the offender.

16. He suggested that two elements should be added to the text of the Chairman's wording for paragraph 8. Explicit reference should be made to jurisdiction established pursuant to article 2 bis, paragraph 2(b), and it should be made clear that jurisdiction, if established, was preserved and could be exercised. Secondly, the paragraph should make clear what was meant by agreements between requesting and requested Parties that dispensed the requested Party from the obligation to submit the case to its competent authorities for purposes of prosecution. He further suggested that the first part of article 4, paragraph 8, should read as follows:

"Without prejudice to the exercise by a Party of any jurisdiction established by it pursuant to article 2 bis, paragraph 2(b), or otherwise in accordance with its domestic law...".

The paragraph should then continue as at present worded, the square brackets being deleted, but with the final part amended to read "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 the case itself".

17. The CHAIRMAN said that he had proposed a reformulation of article 4, paragraph 8, because earlier in the discussion some delegations had proposed the deletion of the words "on the grounds set forth in article 2 bis, paragraph 2(a)". He had sought a middle way between the deletion of those words and their maintenance.

18. Mrs. OLIVEROS (Argentina) said that she supported the Chairman's formulation for article 4, paragraph 8.

19. Mr. AL-NOWAISEER (Saudi Arabia) said that the situation with regard to article 4, paragraph 8, had become very confused. There had been proposals to delete the square brackets enclosing the words "on the grounds... paragraph 2(a)" and also to insert the qualification "solely" at the beginning of that phrase. His delegation had approved those proposals. Subsequently, the Chairman, in an endeavour to reconcile the different positions and achieve consensus, had made an additional proposal. Now, however, the Committee was faced with a substantial reformulation of article 4, paragraph 8, proposed by the representative of the Netherlands. He asked what procedure the Committee should follow in those circumstances.

20. The CHAIRMAN said that a number of proposals had indeed been made and, in the presence of seemingly irreconcilable views, he had proposed a new wording for the paragraph which he thought might constitute an acceptable compromise. The most important issue before the Committee, however, was whether the phrase in square brackets should be deleted or maintained.

21. Mr. ALLAM (Egypt) endorsed the Chairman's latest formulation as flexible and likely to secure consensus.

22. Mr. LAVINA (Philippines) said that his delegation, which had initially favoured deletion of the phrase in
brackets, could now, in the interests of compromise and consensus, approve the Chairman's new proposal.

23. Where domestic laws and the question of jurisdiction were concerned, it was vain to hope to reconcile and satisfy all the different national positions, although he believed that all delegations were nevertheless united in seeking the same objective.

24. Whatever the merits of the proposal of the representative of the Netherlands, it affected paragraph 8, whose text had already been in large measure approved, in its entirety. To re-open discussion of the whole paragraph was undesirable, as was also the resolution of conflicts of opinion through a vote. He sought a ruling on whether or not the whole of article 4, paragraph 8, was again open for discussion.

25. The CHAIRMAN said that the Committee had to take a decision only in respect of the phrase in brackets in that paragraph and of any amendments directly related thereto.

26. Mr. SCHUTTE (Netherlands) said that, in suggesting an alternative wording, he had in no way intended to re-open discussion of paragraph 8 as a whole. His aim had been to enable those delegations which had indicated they had difficulty in doing so to accept the phrase which appeared in square brackets.

27. Mr. MADDEN (Jamaica) summarized the arguments advanced by delegations in support of their position in relation to the bracketed phrase. What was important, in his view, was the right of a requested State to prosecute as it saw fit on the basis of its own domestic law.

28. If it would make that point easier to accept, he could agree to the wording suggested by the representative of the Netherlands for the last part of article 4, paragraph 8. He emphasized that in Jamaica the Director of Public Prosecutions was constitutionally independent and made up his own mind on the basis of all the facts.

29. Mr. OUCHARIF (Morocco) said that the new proposal of the Netherlands representative had implications beyond the bracketed phrase alone. It would be inadmissible to impose constraints on countries which believed that they had the right to prosecute offenders who had committed extraterritorial offences. That was what the Netherlands proposal appeared to do. On the other hand, the Chairman's proposal sought to reconcile the advocates of territoriality with those who supported the right to exercise extraterritorial criminal jurisdiction. That proposal offered, in his view, a means of breaking the deadlock in the Committee's deliberations.

30. Mr. GONZALEZ FELIX (Mexico) said that the Netherlands proposal constituted, in his view, a very well-balanced response to the question of maintaining or deleting the bracketed phrase in article 4, paragraph 8. It permitted preservation of the authority of domestic jurisdiction and at the same time recognized extraterritoriality; it took account of the specific problems related to nationals and opened the way towards the effective exercise of criminal jurisdiction in the pursuit of drug offenders.

31. Mrs. OLIVEROS (Argentina) endorsed the Chairman's proposal, which, *inter alia*, set her delegation's mind at rest concerning what it had discerned as a considerable lacuna in the contents of the square brackets in paragraph 8, namely the absence of any reference to article 2 bis, paragraph 2(b); that lacuna could, she believed, open an equally wide loophole whereby offenders could evade—perhaps indefinitely—the process of justice, as a result of non-extradition, and of non-prosecution because of the reluctance of certain countries to permit their nationals to be judged under a jurisdiction other than their own. The deletion of the phrase in square brackets would consequently be most welcome, as was the introduction, in the Chairman's proposal, of an expanded notion of jurisdiction in accordance with the whole of article 2 bis, paragraph 2.

32. Mr. ERNER (Turkey) recalled that the greater part of the rewording of article 4, paragraph 8, proposed by the Chairman had been approved by consensus the previous day. His delegation expressed no preference as between the maintenance or the deletion of the bracketed phrase in the paragraph. Whatever the outcome of the discussion, Turkey's Public Prosecutor would act in accordance with the domestic law of the country.

33. Mr. LOW MURTRA (Colombia) said that the views expressed by the representative of Argentina corresponded in great measure to his own delegation's understanding of the problem. So far as refusal to extradite was concerned, it would be far more logical to refer in the bracketed phrase in article 4, paragraph 8, to both paragraphs 2(a) and 2(b) of article 2 bis.

34. The excessive length of the Committee's present deliberations was in great measure due to differences in the legal systems and criminal law of States. The Conference should seek to reconcile those differences and to produce formulations that were acceptable to all participants. His delegation earnestly hoped that a compromise solution might be found. It could only with some reluctance bring itself to accept the Chairman's proposal, because it would prefer to see the phrase in square brackets maintained, with the addition of a reference to article 2 bis, paragraph 2(b). Failing that, it could accept a solution reflecting an intermediate position between the rigid stand defended by the Nordic delegations and the equally rigid stand defended by his own delegation at the previous meeting. Such an intermediate formulation, allowing scope for domestic law and at the same time for criminal jurisdiction pursuant to article 2 bis, paragraph 2(b), would appear to exist in the new proposal of the representative of the Netherlands, which consequently met with his delegation's favour.

35. Mr. LAVIÑA (Philippines) proposed the deletion of the phrase "unless otherwise agreed with the requesting Party". He could not accept the further phrase which the Netherlands representative proposed should be added at the end of paragraph 8.

36. Mrs. JONES (United Kingdom) said she hoped that the Chairman would rule in favour of consideration of the
Netherlands new proposal, since it did not reopen the debate and provided a way of dealing with the words in square brackets in paragraph 8.

37. Mrs. MARTINS (Portugal) pointed out that the Committee was reopening discussion of a text approved by consensus. In her view the Netherlands representative’s proposal made it more difficult for the Committee to reach a decision. The Committee should now take a decision on the phrase in square brackets.

38. The CHAIRMAN said that the discussion of article 4, paragraph 8, itself had not been reopened. The Netherlands proposal called only for an addition to a text on which there was already consensus and related in substance to the phrase which appeared in square brackets in the draft convention.

39. Some delegations had expressed themselves in favour of maintaining the phrase which appeared in the paragraph in square brackets, while others had favoured deletion of that phrase. In an attempt to reconcile the two views, he had proposed a new formulation.

40. His understanding was that, of the delegations which had given their views, the majority were in favour of his proposal. He asked the Committee whether it could approve by consensus the text he had proposed.

41. Mr. SCHUTTE (Netherlands), supported by Mr. STEWART (United States) and Mr. BOBIASZ (Canada), said that his delegation could not join the proposed consensus.

42. Mr. AL-NOWAISER (Saudi Arabia), Mrs. OLIVEROS (Argentina), Mr. ERNER (Turkey), Mrs. VEVIA (Spain), Mr. BAEYENS (France) and Mr. ABBAD (Algeria) supported the Chairman’s proposal and said they would join a consensus in its favour.

43. Mr. OSHIKIRI (Japan) said that he supported the proposed consensus, subject to the points he had made earlier in the meeting.

44. Mr. STEWART (United States of America) drew attention to the practical effect of the amendment proposed by the Chairman. Bearing in mind that the Committee’s purpose was to make provision for the extradition of drug traffickers and to enable the authorities of each country to bring them to justice in accordance with their own legal system, the consensus now being spoken of was more apparent than real.

45. Deletion of the words in square brackets in article 4, paragraph 8, would result in that provision applying to all the offences categorized in article 2 bis. No true balance would therefore be achieved. Instead of respecting the principle aut dedere aut judicare, the provision would emphasize judicare at the cost of dedere. From the viewpoint of his delegation and of United States law, prosecution for offences committed anywhere in the world was out of the question. His delegation could accept the proposal made by the representative of the Netherlands, but certainly not that of the Chairman.

46. Mr. OUCHARIF (Morocco), Mr. LOW MURTRA (Colombia) and Mr. AL-MUBARAKI (Kuwait) supported the Chairman’s proposal.

47. Mr. JENKINS (Australia) associated his delegation with the concerns expressed by the United States representative.

48. Mr. VALL (Mauritania) and Mr. AL-SHARARDA (Jordan) supported the Chairman’s proposal.

49. Mr. GONZALEZ FELIX (Mexico) said that the most balanced formula was the one proposed by the Netherlands representative. However, since there did not appear to be a general consensus in the Committee in favour of the Chairman’s proposal, he suggested that a contact group composed of countries particularly interested in the question under discussion should be set up.

50. Mr. WOTAVA (Austria) said that his delegation had taken a slightly different view earlier in the discussion, but in a spirit of compromise, it was now prepared to accept the Chairman’s proposal.

51. Mr. OMAR (Afghanistan), Mr. ALLAM (Egypt), Mr. MOAYEDODDIN (Islamic Republic of Iran) and Mr. SUCHARIKUL (Thailand) also supported the Chairman’s proposal.

52. Mr. SCHUTTE (Netherlands) said that although many delegations had expressed support for the Chairman’s proposal he believed that just as many might be able to join a consensus in favour of the amendment he had proposed. He saw no substantial difference between deleting the words “on the grounds set forth in article 2 bis. paragraph 2(a)” and his own proposal, but if the former proposal were adopted it might affect his Government’s willingness to become a Party to the convention.

53. He therefore urged the Chairman to accept the suggestion of the Mexican representative that informal consultations be held.

54. Mr. ZURITA (Venezuela) and Mrs. DZIETAM (Cameroon) supported the Chairman’s proposal.

55. Mr. AL-OZAIR (Yemen) said that he too supported the Chairman’s proposal. He would like, however, to hear an explanation of the last part of the proposed paragraph.

56. Mrs. VILLALOBOS (Costa Rica) supported the Chairman’s proposal.

57. The CHAIRMAN inquired whether any delegations opposed the consensus in favour of the wording he had proposed.

58. Mrs. OLIVEROS (Argentina) said that delegations which did not indicate their opposition to the consensus should be deemed to accept it.
4. The working group had realized that, while it was desirable to have a single definition of the term "illicit traffic and drug offences."

5. There had been few problems with paragraph 1(a)(iii). The word “including” in the Netherlands proposal had been replaced by the words “such as” and the notion of knowledge had been included.

6. The CHAIRMAN invited interested delegations to hold informal consultations to see whether the difficulties encountered by the Committee could be overcome.

60. Mr. MADDEN (Jamaica) objected to the consensus and said that he would prefer the Netherlands proposal.

61. The CHAIRMAN invited interested delegations to hold informal consultations to see whether the difficulties encountered by the Committee could be overcome.

24th meeting
Saturday, 10 December 1988, at 10.20 a.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 (continued) (E/CONF.82/C.1/L.25)

1. The CHAIRMAN drew the Committee's attention to the existing conventions imposed on the Parties to them.

2. Mr. HENA (Bangladesh), speaking as Chairman of the working group, said that it had been attended by 35 countries and had held 12 meetings. It had discussed article 2, paragraph 1, as well as the definition of the term "illicit traffic", which it had considered in relation to the listing of offences in that paragraph. After long deliberations and a series of informal consultations, the working group had reached a consensus on the major issues involved, the outcome of which was the proposal in document E/CONF.82/C.1/L.25.

3. The working group had agreed that it should base its discussions on the text proposed by the Review Group in document E/CONF.82/3. In the introductory wording to the paragraph 1 put forward in that text it had decided to replace the words "offences under its criminal law" by the words "criminal offences under its domestic law", in order to accommodate various basic domestic laws dealing with illicit traffic and drug offences.

4. The working group had realized that, while it was desirable to have a single definition of the term "illicit traffic", the term could not be defined without first listing in article 2, paragraph 1, the conducts which constituted that notion. The group had therefore turned its attention to the Netherlands proposal in document E/CONF.82/C.1/L.4, which it considered to contain an exhaustive inventory of the offences concerned and which spelt out the meaning of the term "illicit traffic" without requiring it to be defined separately in that paragraph. It was agreed that those offences would have to be listed separately under the mandatory and optional portions of the paragraph in order to make the convention universally acceptable and ensure its uniform and forceful application. Paragraph 1(a)(i) of the working group's proposal included almost the same conducts as article 36 of the Single Convention on Narcotic Drugs; cultivation, possession and purchase had been excluded on the understanding that they were adequately provided for in the Single Convention. The working group had taken the view that, since the draft convention was intended to provide for the areas not covered by existing drug control treaties, it need not repeat references to illicit conducts unless it was necessary to do so in connection with illicit trafficking. Also, the conducts listed in article 36 of the Single Convention were covered by the safeguard of constitutional limitations, whereas paragraph 1(a)(i) of the working group's proposal contained references to offences which were to be established under a mandatory provision. Certain conducts had therefore been provided for separately in paragraphs 1(a)(i) bis and 1(a)(ii). Some delegations having expressed the view that the omission of those conducts from paragraph 1(a)(i) might imply the possibility of derogation from the existing conventions, the working group had decided that the draft should contain an appropriate non-derogation clause, preferably in article 19, so that the new convention could not be interpreted as implying any modification of the obligations which the existing conventions imposed on the Parties to them.

5. There had been few problems with paragraph 1(a)(iii). The word "including" in the Netherlands proposal had been replaced by the words "such as" and the notion of knowledge had been included.
6. The proposed paragraph 1(a)(iv) had been accepted by the working group after the replacement of the word “activities” in the Netherlands proposal by the word “offences”. The insertion in article 2, paragraph 8, of the words “and of legal defences thereto” had been suggested in order to enable certain delegations to accept paragraph 1(a)(iv). That change had been agreed by the working group on the understanding that paragraph 8 would be reconsidered by the Committee.

7. The working group had then turned its attention to the wording proposed by Mexico for paragraph 1 in document E/CONF.82/3 (p. 108), and had agreed that in principle it should be included in the draft. After a discussion as to its place and wording, the working group had agreed to insert a revised version of the Mexican wording in its proposal as paragraph 1(c)(ii) bis, in the portion of the proposal covered by the safeguard wording.

8. The fact that the word “conversion” did not appear in paragraph 1(b) of the Netherlands proposal had given rise to lengthy discussions. The working group had taken the view that conversion and transfer were part of the money-laundering process and should therefore have a place in paragraph 1(b), in the mandatory part of the group’s proposal. The working group had agreed that the reference by the Netherlands to conversion in paragraph 1(c)(i) of its proposal should be moved to subparagraph (b), which had been split into subparagraphs (b)(i) and (b)(ii) in order to solve drafting problems.

9. The introductory wording to paragraph 1(c) had been the subject of lengthy discussion and a consensus had been reached that it should not include a reference to domestic law. There had been differences of opinion on the remainder of the introductory wording and the text now placed before the Committee was a compromise.

10. Paragraph 1(c)(i) had been accepted after the deletion of the words “constitutes proceeds” from the Netherlands proposal. A majority of the working group had favoured including the words “knowing, at the time of receipt” in the group’s proposal.

11. The working group had agreed to include the notion of knowledge in paragraph 1(c)(ii) and had then discussed the term “processing”. Some delegations had expressed the view that manufacture as defined in the Single Convention meant all processes by which drugs might be obtained, and that it included refining as well as the transformation of drugs into other drugs; it had been pointed out that no reference to “processing” appeared in article 36 of the Single Convention. Other delegations had expressed the opinion that processing must be mentioned specifically in article 2 since it was referred to in article 8 of the draft convention. The working group had decided that it should be left to the Chairman of Committee I to consult with the Chairman of Committee II in order to ensure that there was no discrepancy between articles 2 and 8.

12. Paragraph 1 bis of the Netherlands proposal had been accepted with the replacement of the word “knowledge” by the words “knowledge, intent, or purpose”.

13. The definition of the term “illicit traffic” had caused major difficulties arising from conceptions of the drug problem and fundamental aspects of drug supply and demand. One group of delegations had strongly favoured a broad-based definition covering all aspects of the drug problem from production and supply to demand, on the basis that demand, supply and production were inter-related and it was therefore necessary to include the notion of consumption in the definition. Other delegations had preferred a technical definition to a generic one and had argued that it was premature to make consumption the subject of international action; whereas the draft convention dealt with illicit trafficking, other instruments, such as the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, formed the basis for activities directed towards demand reduction, as did resolutions. General agreement had been reached on the need to develop the wording in the preamble to the convention by adding to article 2 a paragraph 1 ter requiring the possession, purchase or cultivation of a narcotic drug or a psychoactive substance for personal consumption contrary to the amended Single Convention or the Convention on Psychoactive Substances to be established as offences subject to the safeguard wording; and the definition of the term “illicit traffic” to consist of a reference to the offences set forth in article 2, paragraphs 1 and 1 ter. It had also been agreed at that stage to add to article 2 a new paragraph 2(d) providing for the treatment, education, after-care, rehabilitation and social reintegration of persons committing offences established in accordance with paragraph 1 ter, as either an alternative or an addition to conviction or punishment. A common understanding had also been reached that article 10 should be redrafted to expand the notion of consumption. A consensus had been reached that the expression “illicit traffic” should be replaced by the expression “offences established in accordance with paragraph 1 of article 2” wherever it appeared in the draft. That change might best, he thought, be dealt with by the Drafting Committee.

14. The delegations of Bolivia, Colombia and Peru had expressed reservations on the working group’s definition of “illicit traffic” and the proposals on paragraph 1 ter and paragraph 2(d) which went with it.

15. He submitted for the consideration of the Committee the text proposed by the working group for article 2, paragraphs 1, 1 bis, 1 ter, 2(d) and 8; its suggestion concerning the word “processing”; its suggestion regarding a non-derogation clause; and its proposed definition of the term “illicit traffic”.

Paragraph 1(a) (E/CONF.82/C.1/L.25)

16. Mr. OSHIKIRI (Japan) suggested that, for the sake of consistency, the brackets around the word “processing” in paragraph 1(c)(ii) of the working group’s text should also be placed around the word “processing” in paragraph 1(a)(iii); and that the Drafting Committee should be invited to decide whether the word “processing” should be included.

17. It was so agreed.
18. Mr. MADDEN (Jamaica) said that, man being well known for his ingenuity, the list of plants in paragraph 1(a)(i) bis of the working group’s proposal was too restrictive: the convention would be in force for many years, giving ample time for new drug plants to be found and cultivated.

19. The CHAIRMAN pointed out that paragraph 1(a)(i) bis referred specifically to “cultivation... contrary to the Single Convention on Narcotic Drugs...” and had been drafted on the basis of that convention.

20. Mr. OUCHARIF (Morocco) approved the text proposed by the working group. It was realistic and practical and provided a suitable framework within which domestic legislators could operate. Any problems concerning details might be left to the Drafting Committee.

21. Mr. FOFANA (Senegal) agreed with the views expressed by the previous speaker.

22. Mr. CAJIAS KAUFFMANN (Bolivia) said that his delegation, along with those of Colombia and Peru, had reservations concerning the working group’s treatment of consumption for personal use. He did not wish to hinder the adoption of the draft convention and asked for his delegation’s views to be reflected in the report of the Committee to the Conference in plenary session.

23. Mr. AL-NOWAISER (Saudi Arabia) said he regretted the fact that providing a person with narcotic drugs or psychotropic substances as a gift was not listed as an offence under paragraph 1(a).

24. The CHAIRMAN said that, in the absence of any objections, he would take it that the Committee approved the text proposed in document E/CONF.82/C.1/L.25 for article 2, paragraph 1(a), as corrected and amended.

25. It was so agreed.

Paragraph 1(b) (E/CONF.82/C.1/L.25)

26. Mr. MADDEN (Jamaica) commented that it was conceivable under paragraph 1(b)(i) of the working group’s text that a participant in an offence or offences could find himself convicted while the principal authors of it were not. Such a result would hardly be equitable.

27. Mr. LAVIÑA (Philippines) said that the words “to escape the legal consequences of his actions” in paragraph 1(b)(i) were unclear and should be examined by the Drafting Committee.

28. Mr. AL-OZAIR (Yemen) suggested that the text proposed in document E/CONF.82/C.1/L.25 for article 2, paragraph 1(b), should be approved.

29. It was so agreed.

Paragraph 1(c) (E/CONF.82/C.1/L.25)

30. Mr. AFFENTRANGER (Switzerland) referred to the introductory wording of the working group’s proposal. He observed that the term “constitutional principles” had been translated in the French version as “système constitutionnel”. He questioned the meaning of the expression “basic concepts of its legal system”.

31. Mr. POPOV (Bulgaria) objected to the term “constitutional principles”; from a legal point of view he would have preferred “constitution” or “constitutional system”. The term “basic concepts” was also questionable, being open to a wide variety of interpretations. He also wondered whether the word “legal system” meant “legislation”.

32. Mr. ZURITA (Venezuela) queried the stipulation that Parties must take account of their constitutional principles and legal systems only when establishing the offences enumerated in paragraph 1(c). For the recognition of any offence, at least in Venezuela, it was a sine qua non that the domestic legal system must be respected.

33. Mr. SHING (Mauritius) said that he shared the doubts expressed by the representatives of Switzerland and Bulgaria. The word “provisions” would be more appropriate than the term “principles”. He suggested replacing the words “basic concepts of its legal system” by the words “its legislation”.

34. Mr. SEKELEMANI (Botswana) asked whether the word “or” in the expression “offence or offences” in subparagraph (c)(i) was used conjunctively or disjunctively.

35. Mr. ERNER (Turkey) said that the introductory wording to subparagraph (c) was too vague; in particular, the term “basic concepts” would be difficult to interpret in practice. He thought that the distinction drawn between the offences listed in subparagraph (c) and those listed in subparagraphs (a) and (b) was unjustified.

36. Mr. OUCHARIF (Morocco) said he had no objection to the introductory wording since Parties were required, at the beginning of paragraph 1, to adopt the necessary measures to establish all the offences listed in that paragraph under their domestic law. The working group had attempted to draft a text containing all the notions needed to cover both written and unwritten legal concepts. The introductory wording to subparagraph (c) could, he thought, be deleted without altering the sense of paragraph 1.

37. Mr. YAHIAOUI (Algeria) asked what difference there was, if any, between a système constitutionnel and the basic concepts of a legal system. He would prefer the introductory wording to refer to constitutional systems and domestic law.

38. Mr. LAVIÑA (Philippines) agreed with the objections raised by the representative of Bulgaria to the introductory wording. Its text could perhaps be improved by the Drafting Committee. He pointed out that a reference to domestic law or internal law would, according to the law of treaties, include every part of a country’s law-making processes. He asked whether the word “knowing” in subparagraph (c)(i) subsumed the idea of intention. In
subparagraph (c)(ii), he suggested removing the brackets round the word “processing”.

39. The CHAIRMAN pointed out that the Committee had agreed to leave the word “processing” in brackets for consideration by the Drafting Committee.

40. Mr. SCHUTTE (Netherlands) explained the basis on which the introductory wording to subparagraph (c) had been drafted by the working group. The words “constitutional limitations, legal system and domestic law”, which appeared in the basic text (E/CONF.82/3) were modelled on article 36, paragraph 2, of the 1961 Single Convention on Narcotic Drugs. The working group had replaced them with the wording in document E/CONF.82/C.1/L.25 in order to reduce to some extent the emphasis on domestic law. The term “constitutional limitations” had been rejected in the light of Mexico’s proposal for article 2 (E/CONF.82/3, p. 108), paragraph 1(a)(iv) of which contemplated an offence of acts of publicity and propaganda. Because the principle of freedom of expression posed an obstacle to classifying such acts as an offence, the working group had decided to use the term “constitutional principles” instead of “constitutional limitations” for the introductory wording to paragraph 1(c). The term “constitutional provisions” was inappropriate because some countries had unwritten constitutions enshrining basic principles.

41. As to the term “basic concepts of its legal system”, he pointed out that the word “legislation” could not be substituted for the words “legal system” because concepts embodied in judicial decisions were equally important. Moreover, the term “legal system” was used in the Single Convention. The term “basic concepts” had been chosen advisedly in order to reflect the differences between civil and common law systems in respect of the offences enumerated in subparagraphs (i) and (ii). Those differences included the treatment of the offence of receiving criminal property and the fact that the common law offence of conspiracy had no exact equivalent in the criminal law of civil law countries.

42. His own delegation approved the introductory wording to paragraph 1(c) as proposed in document E/CONF.82/C.1/L.25.

43. Mr. BAHEYENS (France) said that the introductory wording to paragraph 1(c) was essential, because a number of the offences enumerated in subparagraph (c) were foreign to certain legal systems, including his own. As to the precise language to be used, in the French version he would prefer the words “principes constitutionnels” to “système constitutionnel” and the words “principes fondamentaux” to “notions fondamentales”. He could not agree to the suggestion that the term “legal system” should be replaced by “legislation”; legislation, in the form of statutes, was enacted by parliamentary organs, whereas legal systems encompassed administrative law and judicial decisions as well.

44. Mr. MADDEN (Jamaica) approved the text in document E/CONF.82/C.1/L.25 as it stood. He agreed that the substitution of the term “legislation” for “legal system” would be unduly restrictive. In subparagraph (c)(i) the loophole which might be created by the words “knowing, at the time of receipt” should be eliminated. The knowledge might be obtained subsequent to receipt of the tainted property, in which case the offence should be dealt with no less severely.

45. Mr. POPOV (Bulgaria) repeated the objections he had raised, from a legal point of view, to the introductory wording to subparagraph (c). Among the States Members of the United Nations, some had legal systems based on Roman law or—as in the case of his own country—the Napoleonic Code; many, especially in Africa and America, followed the common law system. The word “legislation” had a specific connotation, signifying that part of the law which was created by legislative bodies. Its content varied widely from country to country, as did the content of “constitutional principles”, which might appear in written or in unwritten forms. Hence there was no possible equivalence between the legislation of a country and its legal system. He therefore entertained grave doubts about the introductory wording proposed by the working group, which he believed was incapable of accurate legal interpretation. He was nevertheless willing to accept it provided the difficulties it posed were fully understood.

46. Mrs. VEVA (Spain) said that the working group’s text was satisfactory. Like France, however, she would like the term “basic concepts” to be replaced by “basic principles”.

47. Mr. WOTAVA (Austria) said that the corresponding language of article 36 of the Single Convention was more precise and his delegation would prefer it. If that was not generally acceptable, he would opt for the working group’s version.

48. Mr. OSHIKIRI (Japan) said that if paragraph 1(c)(i) was applied strictly, it could even cover the purchase of items like oranges at supermarkets. It could also apply to intangible property, so that the conduct of normal business activities could constitute an offence.

49. Mr. DURAY (Belgium) agreed that the term “basic concepts” would cover both legislation and judicial decisions.

50. Mr. AL-NOWAISER (Saudi Arabia) suggested that the words “knowing that they are” in subparagraph (c)(ii) should be replaced by the words “with the purposes of their”.

51. Mr. de la GUARDIA (Argentina) said that, apart from minor amendments, for example the deletion of the introductory safeguard wording to paragraph 1(c), the working group’s text (E/CONF.82/C.1/L.25) had his full support.

52. Mr. LAVINIA (Philippines) said that the words “at the time of receipt” were useful as a protection for possessors in good faith of tainted property.

53. Mr. AFFENTRANGER (Switzerland) said that his delegation had received no clear answer to the question he had raised at the start of the meeting.
54. The CHAIRMAN, in reply to the question raised by the representative of Botswana, said that the words “set forth” in paragraph 1(c)(i) referred to the words “an offence” as well as the word “offences”.

55. Mr. ZURITA (Venezuela) said that his delegation had not received a satisfactory explanation for the introductory wording to subparagraph (c) of the working group’s proposal and accordingly reserved its position on that part of the text.

56. Article 2, paragraph 1(c), as proposed in document E/CONF.82/C.1/L.25, as corrected, was approved.

Paragraph 1 bis (E/CONF.82/C.1/L.25)

57. Ms. VOLZ (United States of America) said that the words “paragraph 1” should read “paragraph 1 or paragraph 1 ter”. Also, paragraph 1 ter should precede paragraph 1 bis.

58. The CHAIRMAN suggested that the words “set forth in paragraph 1” might usefully read “set forth in this article”.

59. It was so agreed.

60. Article 2, paragraph 1 bis, as proposed in document E/CONF.82/C.1/L.25, as amended, was approved.

Paragraph 1 ter (E/CONF.82/C.1/L.25)

61. Mrs. VEVIA (Spain) said that her delegation would have no difficulty in accepting paragraph 1 ter of the working group’s text if the safeguard wording was deleted.

62. Mr. AFFENTRANGER (Switzerland) strongly urged the need for some explanation of the language used in the safeguard wording. Were the words “basic concepts” to be understood to refer to legislation or to the constitution?

63. Mr. LOW MURTRA (Colombia) said that his delegation had never favoured the use of safeguard clauses in conventions but had accepted them in order to achieve a consensus. All countries had some form of constitutional basis, whether written or not, and all legal systems had some concepts which were more basic than others, the whole comprising a pyramidal structure. That in essence was what the safeguard wording in paragraph 1 ter was about.

64. Article 2, paragraph 1 ter, as proposed in document E/CONF.82/C.1/L.25 was approved.

65. Mr. CAJIAS KAUFFMANN (Bolivia) said that his delegation placed on record its reservation with regard to coca leaf cultivation. Coca leaf was not a narcotic, nor was it used for narcotics production. If, pursuant to the new convention, his country found itself obliged to imprison persons for the purchase or possession of coca leaf, whole batches of the population would be in jeopardy and the prisons would be full to overflowing. It would be quite wrong if the present convention were to go beyond the stipulations of the Single Convention in regard to coca leaf cultivation.

66. The CHAIRMAN invited the Committee to approve the inversion of the order of paragraphs 1 bis and 1 ter suggested by the United States and to renumber those two paragraphs accordingly.

67. It was so agreed.

Paragraph 2(d) (E/CONF.82/C.1/L.25)

68. The CHAIRMAN said that, if there were no comments, he would take it that the Committee approved the working group’s proposal for article 2, paragraph 2(d) (E/CONF.82/C.1/L.25).

69. It was so agreed.

Paragraph 8 (E/CONF.82/C.1/L.25)

70. The CHAIRMAN said that, if there were no comments, he would take it that the Committee approved of the working group’s proposal for article 2, paragraph 8 (E/CONF.82/C.1/L.25).

71. It was so agreed.

Article 1: introductory wording, definition of “illicit traffic” (continued) (E/CONF.82/C.1/L.25)

72. The CHAIRMAN invited the Committee to consider first the definition of “illicit traffic” proposed by the working group for inclusion in draft article 1 (E/CONF.82/C.1/L.25, section B), as amended by the Committee’s decision to renumber article 2, paragraph 1 ter, to read “1 bis”.

73. Mr. POPOV (Bulgaria) supported the proposed definition.

74. Mr. MADDEN (Jamaica) said that, although he would not oppose a consensus on that definition, it stated that “illicit traffic” meant “those offences set forth in article 2, paragraphs 1 and 1 bis”. He questioned whether the offences set forth in those two paragraphs of article 2 really constituted illicit traffic.

75. Mr. CAJIAS KAUFFMANN (Bolivia) reserved his delegation’s position. With a few changes in wording in various other articles, the definitions set forth in article 1 would become superfluous. For example, the definition of “Board” as meaning the International Narcotics Control Board could be dispensed with by using the full title of the Board in the places in which it appeared in the other articles.

76. Mr. ZURITA (Venezuela) agreed. In his view, a definition of “illicit traffic” was unnecessary.

77. Mr. NEGREROS (Peru) said that his delegation could not accept a definition of illicit traffic which ignored the basic elements of that traffic. In the preparatory work of the Conference, his country had stressed the fact that the essential features of illicit traffic were not being clarified by the terms under consideration, which tended to attribute responsibility for that traffic to the wrong quarters.
78. Mr. OSHIKIRI (Japan) suggested that, in the definition under consideration, the words "those offences set forth in article 2, paragraphs 1 and 1 bis" should be replaced by the words "the offences established pursuant to article 2, paragraphs 1 and 1 bis". That would be in line with the language of article 2, paragraph 1(c)(ii) bis approved by the Committee.

79. Mr. SCHUTTE (Netherlands) said that his delegation accepted the proposed definition, which should be placed in article 1, on the understanding that it would be governed by the introductory wording to that article as proposed in the basic text.

80. The CHAIRMAN said that, since the proposed definition of "illicit traffic" would be governed by the wording to which the Netherlands representative had referred, the Committee might now examine that wording. If there were no comments, he would take it that the Committee agreed to approve the introductory wording to article 1 proposed in document E/CONF.82/3.

81. It was so agreed.

82. Mr. JANSZ (Sri Lanka) welcomed the proposed definition because it was sufficiently comprehensive to cover both the supply and the demand aspects of the drug problem.

83. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee approved the definition of "illicit traffic" proposed by the working group in document E/CONF.82/C.1/L.25, as amended.

84. It was so agreed.

Article 1 bis (E/CONF.82/C.1/L.1/Rev.2)

85. The CHAIRMAN invited the Committee to examine the proposal for an article 1 bis submitted by 41 countries, to which Kuwait should now be added as a forty-second sponsor (E/CONF.82/C.1/L.1/Rev.2).

86. Mr. LEE (Canada) introduced the proposal in document E/CONF.82/C.1/L.1/Rev.2. Speaking on behalf of his own country and Mexico—the sponsors of the proposal in its original form (E/CONF.82/C.1/L.1)—he said that the remarks which followed were intended to provide the rationale for the revised proposal and had been explained to all the other sponsors. He asked for the remarks to be summarized in any commentary prepared on the convention.

87. The Conference must recognize that the instrument it would adopt was an extremely ambitious, complex and comprehensive document that reached beyond the parameters of existing criminal law conventions. He would only mention two examples that came to mind: article 5 on mutual legal assistance and article 3 on identification, tracing, freezing, seizing or confiscation. Not surprisingly, when States were asked to assume obligations in new fields they were, and legitimately so, concerned that those did not infringe on universally recognized legal principles such as the sovereign equality and territorial integrity of States.

88. Since introducing the article, a number of delegations had expressed concern that the second sentence of paragraph 1 could be interpreted as providing that obligations assumed by Parties pursuant to the convention were subject to domestic law. That was definitely not—he would stress that word—the intention of the co-sponsors or a correct interpretation of that provision. He had to state clearly that that sentence was not in any way to be interpreted as a derogation from specific obligations assumed by Parties. Rather, it was to clarify that while Parties had assumed obligations, it was up to each of them to decide what laws they would require and what institutions they would need to establish to meet such obligations.

89. By the same token, in paragraph 2, those States Parties which might see fit to interpret the phrase "territorial integrity of States" as a springboard to assert their particular interpretation of rights to lands or waters would be badly mistaken concerning the intention of that provision. That provision merely reiterated accepted and well-recognized international law concerning the territorial integrity of States, nothing more.

90. Paragraph 3 reiterated that no Party was empowered by the convention to undertake, without—he would stress—permission "in the territorial jurisdiction of any other Party, the exercise and performance of functions whose jurisdiction or competence are exclusively reserved to other Parties". He had to emphasize that Parties might, of course, grant other Parties the authority to exercise and perform such functions if they so wished. In other words, that provision was not intended to prevent joint co-operation in areas normally reserved for the exclusive jurisdiction of one Party. Indeed, the sponsors foresaw that that co-operation would occur frequently. What was important to emphasize, was that Parties were not to unilaterally extend jurisdiction beyond their borders except as specifically agreed to in the convention.

91. Some delegations might point out that such a "Scope of the Convention" article was not contained in the 1961 Single Convention as amended by the 1972 Protocol or the 1971 Convention on Psychotropic Substances. However, the sponsors believed that the present convention was significantly broader in scope than those conventions, particularly with regard to its criminal law provisions.

92. Finally, some delegations might question the need for such an article, arguing that there were numerous safeguard clauses throughout the various articles. In response the sponsors would emphasize that none of the principles contained in article 1 bis went beyond those contained in the other articles of the draft convention. It was useful, however, to emphasize such general principles at the beginning of the convention so that there could be no misunderstanding. Moreover, the sponsors were confident that with the clarification provided by article 1 bis, delegations and Governments would feel reassured and less hesitant to assume the obligations contained in the other articles of the convention.

93. It was with the foregoing explanations and clarifications that 42 delegations had felt confident in co-sponsoring the present proposal. The original co-sponsors were
prepared to make any additional statements that might be required of them to be placed on the record to give the fullest assurances that article 1 bis was not intended to derogate from obligations assumed pursuant to the convention and was not meant to go beyond those principles of international law that were well established and universally accepted.

94. Mr. SZEKELY (Mexico) endorsed the statement made by the Canadian representative. Like him, he stressed that there was no intention on the part of the sponsors that their proposal should derogate in any way from the obligations to be subscribed by States that became Parties to the convention. The purpose of the sponsors was simply to strengthen the convention by attracting more States to participate in it. He thanked all the delegations which had agreed to sponsor the amendment in document E/CONF.82/C.1/L.1/Rev.2 and declared that his delegation was prepared to give every assurance regarding the intentions of the proposal.

95. Mr. NEWLIN (United States of America) said that his delegation was opposed to the article 1 bis set forth in document E/CONF.82/C.1/L.1/Rev.2. It believed that the convention did not need an article on its scope. Moreover, several parts of the proposed article were already covered by existing provisions. For example, the first sentence of paragraph 1 and the whole of paragraph 2 were more suitable for the preamble to the convention. As to the second sentence of paragraph 1, it could be interpreted as a saving clause which would call into question the obligations of the Parties under the convention to change their national legislation in order to bring it into conformity with the convention. That result might not have been the one intended by the original sponsors of article 1 bis but it was unfortunately a possible interpretation of the sentence in question. It was also highly questionable whether a safeguard clause of a general character in article 1 bis was needed when there were already safeguard clauses in a number of articles of the convention, such as articles 2, 3, 4 and 5.

96. Paragraph 3 of the proposed article 1 bis dealt with a very minor issue which was already covered by article 6, paragraph 1(a).

97. In conclusion, all the elements in the proposed article 1 bis were either unnecessary because they were to be found elsewhere in the draft or undesirable because they were likely to have harmful consequences on the convention if adopted. He accordingly urged the Committee to reject the proposal.

98. Mr. HAY (United Kingdom) said that in the preliminary stages of the discussion of the convention, there had been much debate on the subject-matter of article 1 bis. His delegation recognized that the present text represented a considerable improvement on the proposals on the subject of scope in documents E/CONF.82/3 (p. 51) and E/CONF.82/C.1/L.1, which his delegation would have found very difficult to accept. He appreciated the flexibility shown by Canada and Mexico in meeting the wishes of delegations like his own.

99. He welcomed the Canadian representative's comment that paragraph 2 of the proposed article should not be interpreted as meaning that the obligations to be assumed under the convention were subject to domestic law. He also welcomed the assurance that it was not the intention of the sponsors to interpret article 1 bis in that manner.

100. His delegation, together with those of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain and Sweden, believed that the concluding sentence of paragraph 1 of the proposal in document E/CONF.82/C.1/L.1/Rev.2 needed redrafting in order to reflect clearly and accurately the intentions of the sponsors. They therefore proposed the following wording for that sentence: "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". His delegation and the other delegations which had sponsored that wording could accept the 42-nation proposal if it was amended accordingly.

101. Mr. BAEYENS (France) associated himself fully with the remarks made by the United Kingdom representative.

102. Mr. IBAÑEZ (Spain) said that the Mexican delegation had shown a remarkable spirit of flexibility in agreeing that the version of article 1 bis appearing in document E/CONF.82/C.1/L.1/Rev.2 should replace the proposal it had made in the Review Group (E/CONF.82/3, p. 51).

103. Mr. LEE (Canada) said that the 15-nation sub-amendment would serve to make more explicit the intention of the sponsors of the proposal in document E/CONF.82/C.1/L.1/Rev.2. His delegation would accept it if the Mexican delegation did likewise.

104. Mr. SZEKELY (Mexico) expressed his delegation's appreciation to the sponsors of the 15-nation sub-amendment for the conciliatory spirit which their proposal represented. His delegation accepted the sub-amendment.

105. Mr. POPOV (Bulgaria) said that his delegation wished to see the sub-amendment in writing.

106. Mr. SCHUTTE (Netherlands) said that, in the pre-Conference negotiations on the draft, the Mexican proposal for article 1 bis reproduced in document E/CONF.82/3 (p. 51) had met with strong reservations on the part of his delegation, on grounds largely similar to those put forward by the United States representative at the present meeting. Its reservations had lessened with the proposal submitted by Canada and Mexico in document E/CONF.82/C.1/L.1, but some still remained with the version of that proposal now submitted in document E/CONF.82/C.1/L.1/Rev.2.
Article 2 (continued)

107. Mr. WOTAVA (Austria) asked whether it was proposed to refer to the working group the matters outstanding in article 2.

108. Mr. NEWLIN (United States of America) said that the working group would be the most appropriate forum in which to deal with those matters.

The meeting rose at 1.25 p.m.

25th meeting
Monday, 12 December 1988, at 10.15 a.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 2 (continued) (E/CONF.82/C.1/L.25)

Paragraph 2(a)

1. The CHAIRMAN invited the Committee to consider paragraph 2(a) and drew attention to the fact that it had been proposed that the last word of the paragraph “forfeiture” should be replaced by “confiscation”.

2. Mrs. KATHREIN (Austria) suggested that the single word “forfeiture” should be replaced by “forfeiture and confiscation”. She did not object to the reference in the paragraph to the “grave nature of these offences”, but felt it should be borne in mind that there could also be individual cases of a minor nature.

3. The CHAIRMAN pointed out that the term “confiscation” would be defined in article 1 as including forfeiture. There was therefore no need to use both terms. The word “confiscation” was sufficient.

4. Mrs. KATHREIN (Austria) withdrew her proposed amendment.

5. Mr. AL-OZAIR (Yemen) suggested that the words “according to its domestic law” be inserted at an appropriate place in the opening phrase of paragraph 2(a).

6. Mrs. VOLZ (United States of America) saw no need to include those words. Paragraph 8 of article 2 clearly specified that the description of the offences in question was “reserved to the domestic law of a Party”.

7. The CHAIRMAN pointed out that the same paragraph 8 stated that “such offences shall be prosecuted and punished in conformity with that law”, namely the domestic law of the Party concerned.

8. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved paragraph 2(a), subject to the replacement of the word “forfeiture” by the word “confiscation” at the end of the paragraph.

9. It was so decided.

Paragraph 2(b)

10. Mr. SCHUTTE (Netherlands) pointed out that, while paragraph 2(a) referred only to “the offences set forth in paragraph 1 of this article”, paragraph 2(b) appeared to refer, more generally, to the perpetration of any offence. It could therefore be argued that the provisions of paragraph 2(b) applied not only to the offences set forth in paragraph 1 but also to those mentioned in the new paragraph 1 bis. There thus appeared to be some overlapping between paragraph 2(b) and paragraph 2(d). That problem could be solved by leaving paragraph 2(b) unchanged and adjusting the wording of paragraph 2(d).

11. The CHAIRMAN said that the Committee had already approved wording for paragraph 2(d). It was undesirable to seek now to amend its text. The drafting problem mentioned by the Netherlands representative could be solved by making paragraph 2(b) refer only to the perpetrators of the offences set forth in paragraph 1.

12. Mrs. KATHREIN (Austria) supported the Chairman’s suggestion.

13. Mr. OUCHARIF (Morocco) opposed any reconsideration of the wording of paragraph 2(d). Any reopening of discussion could affect the substance of provisions already adopted.

14. Mr. BAHEYENS (France) said that if there were any duplication, it was between paragraph 2(c) and paragraph 2(d). He suggested that paragraph 2(c) should be eliminated, subject to adjustment of the wording of paragraph 2(d).

15. Mr. KAUFFMANN (Bolivia) was opposed to amendment of the paragraphs which had been mentioned. Paragraph 2(b) dealt with measures to be taken in addition to conviction or punishment, while paragraph 2(c) referred
to other measures to be taken in certain cases of a minor nature. The measures referred to were the only ones which would be taken in those cases. The experts who had considered the question at great length had concluded that there were two different situations, which required separate treatment. The treatment was specified in paragraphs 2(b) and 2(c), respectively.

16. Mr. MULAT (Ethiopia) also considered that paragraphs 2(a), 2(b) and 2(c) should not be altered.

17. Mrs. PONROY (France) said that there was some duplication in paragraphs 2(c) and 2(d). To remedy it she suggested that the phrase "including the cases referred to in paragraph 1 bis" should be inserted after the words "of a minor nature" in paragraph 2(c).

18. Mr. SCHUTTE (Netherlands) agreed that it was preferable not to alter paragraph 2(d), which the Committee had approved. He would also like to leave unamended paragraph 2(a), with its reference only to the offences set forth in paragraph 1, and without any mention of those referred to in paragraph 1 bis. He suggested, however, that a reference to the offences set forth in paragraph 1 should be included in paragraph 2(b), which might read as follows:

"(b) Each Party 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, after-care, rehabilitation or social reintegration."

19. He drew attention to the inadequacy of the expression "alternative to conviction" in paragraph 2(c). The alternative to conviction was, properly speaking, acquittal. He would not propose any change, however, since the expression was to be found in the 1961 Single Convention.

20. Mr. LAVIÑA (Philippines) said that he had no objection to the amendment to paragraph 2(c) suggested by the Netherlands.

21. The CHAIRMAN noted that there appeared to be substantial support for the maintenance of paragraph 2(b) as worded in the draft convention. In the absence of objection he would take it that the Committee approved article 2, paragraph 2(b).

22. It was so decided.

Paragraph 2(c)

23. Mr. WILKITZKI (Federal Republic of Germany) urged that paragraph 2(c) should be restricted in its effects to the offences referred to in paragraph 1 of article 2.

24. Mr. FOFANA (Senegal) said that the two cases envisaged in the paragraphs just referred to were: first, the substitution of certain measures for the penalty; secondly, measures additional to conviction or punishment. The measures envisaged were, however, the same in both cases.

25. Mr. GONZALEZ FELIX (Mexico) observed that the Spanish version of paragraph 2(c) did not appropriately render the expression in the original English text "alternatives to conviction or punishment".

26. Mr. MADDEN (Jamaica) said that it was not strictly correct to refer to "alternatives to conviction"; the reference should be to alternatives to punishment. Before any measures could be taken the person concerned had to be convicted as an offender.

27. Mr. FAIOLA (Italy) said that paragraphs 2(c) and 2(d) should be left unchanged. It was also essential, in his view, to keep the paragraphs of article 2 distinct from one another, since they dealt with different questions.

28. Mr. OUCHARIF (Morocco) also favoured leaving unchanged the various paragraphs which had been referred to. Paragraph 2(b) dealt with measures which were supplementary to conviction or punishment. Paragraph 2(c) dealt with the replacement of punishment by certain measures. Those measures could be applied after conviction, but they could also be applied before conviction. The formulation in the draft convention was therefore adequate and should be left unchanged.

29. Mr. MULAT (Ethiopia) urged that paragraphs 2(a), 2(b) and 2(c) should not be modified and that paragraph 2(d) should be approved as it appeared in document E/CONF.82/C.1/L.25. He did not see how paragraph 2(c) and paragraph 2(d) could be amalgamated in view of the difference between those provisions.

30. Mr. ASHOUR (Libyan Arab Jamahiriya) and Mr. BRUCE (Ghana) expressed opposition to any amendment of paragraph 2(c) as it appeared in document E/CONF.82/3.

31. Article 2, paragraph 2(c), was approved.

Article 1 (concluded)

32. Mr. SCHUTTE (Netherlands) proposed that the definitions of "laundering" and "concealment" should be deleted, as it had been decided that the former term would not be used in the text of the convention, while the definition of the latter term was inadequate.

33. It was so decided.

34. Mr. SCHUTTE reserved his delegation's position on any other term used in the draft convention which might require a definition, such as "manufacturing", "processing", "extraction", "materials" and "preparation". He proposed that consideration of definitions for those terms should be postponed pending action by Committee II on articles 8 and 9.

35. It was so decided.

36. The CHAIRMAN suggested that the Committee might wish to approve the terms "Board", "Commission", "Council" and "Secretary-General" as they were the traditional definitions already used in existing Conventions.

37. The definition of "Board", "Commission", "Council" and "Secretary-General" was approved.
Article 4 (continued)

Paragraph 8 (continued)

38. Mr. SCHUTTE (Netherlands), reporting on the informal consultations which had taken place on the subject of paragraph 8, said that the participating delegations had taken as the basis for their discussion the wording of paragraph 8 proposed by the Chairman, as subsequently modified by him:

"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, and has established its jurisdiction in accordance with article 2 bis, paragraph 2, submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party."

39. A number of delegations, including that of the Netherlands, had indicated their inability to accept that text, and the discussion had proceeded on the basis of a compromise text in which the phrase "in accordance with article 2 bis, paragraph 2" had been amended to read "in accordance with article 2 bis, paragraph 2(a)". In that text, the paragraph began with an introductory part ending with the word "shall"; the remainder of the existing text formed a new subparagraph (a), which was followed by a subparagraph (b) reading as follows:

"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(b), submit the case, at the request of the requesting Party, to its competent authorities for the purpose of prosecution."

40. Some delegations had remained opposed to any reference to obligatory submission of a case to competent authorities at the request of the requesting Party, and the Mexican delegation had made a further compromise proposal that the phrase "at the request of the requesting Party" should be deleted and replaced by the addition, at the end of the paragraph, of the phrase "unless opposed by the requesting Party for the purposes of preserving its legitimate jurisdiction". A consensus had been achieved on that basis.

41. He suggested that that wording should be approved by the Committee. If no consensus could be reached on that wording, he suggested that paragraph 8, as a whole, should be deleted, and that article 2 bis, paragraph 2, should be deleted in consequence. He pointed out that the introductory part of that wording for paragraph 8 applied to both of the new subparagraphs. The provisions of neither subparagraph could prejudice the exercise of any criminal jurisdiction established in accordance with the domestic law of a Party in whose territory an alleged offender was found.

42. Mr. WILKITZKI (Federal Republic of Germany) asked whether the phrase "unless opposed by the requesting Party" meant that not only was any obligation to prosecute overridden by an objection from the requesting Party, but also that any right to prosecute, in accordance with the domestic law of the requested Party, was voided.

43. Mr. LAVIÑA (Philippines) said that, if his delegation had been participating at the time in the informal consultations, it would have opposed the Mexican proposal just mentioned. The proposal referred to by the Netherlands representative, as amended by the Mexican delegation, was not the compromise proposal: the compromise proposal had been the one put forward by the Chairman, which had been generally endorsed. The problem remained the phrase "at the request of the requesting Party". Even when amended to read "unless opposed by the requesting Party", that phrase still meant that the jurisdiction of the requested Party was subordinated to that of the requesting Party. That notion implied the possibility of distrust of the requested Party's jurisdiction on the part of the requesting Party and attacked the requested Party's sovereignty. It was true that legal systems differed; some were accusatorial in nature, others inquisitorial, but neither should be considered inferior.

44. He could agree to the deletion of article 4, paragraph 8, with the consequential deletion of article 2 bis, paragraph 2, but he proposed instead that the phrase "unless opposed by the requesting Party" should be modified to read "taking into serious consideration any request of the requesting Party". He would not, however, oppose the wording which had been proposed by the Chairman.

45. Mrs. KATHREIN (Austria) said that she agreed with the representative of the Federal Republic of Germany; the formula "unless opposed by" was stronger than "at the request of".

46. Mrs. OLIVEROS (Argentina) considered that the proposed new text could form the basis for a compromise. It had been carefully drafted to provide adequate protection of the right of each country to exercise criminal jurisdiction in accordance with its domestic law. The main problem seemed to arise in connection with the proposed new subparagraph 4(b). She recalled that a first version submitted during the informal consultations had established as a general rule that the requested State would not submit a case to its competent authorities for prosecution, but would do so as an exception, upon the request of the requesting State. That principle having proved unacceptable, the position had been reversed, so as to provide that the requested State would as a general rule submit a case to its competent authorities for prosecution, unless requested not to do so by the requesting State.

47. She appreciated the reasons for the concern expressed on that point but felt that the objection raised by the representative of the Philippines could be overcome by modifying the phrase "unless opposed by the requesting State", which was perhaps too strong. The point raised by the representative of the Federal Republic of Germany was true; in her view, by the introductory part of the proposed new paragraph 8, which made it clear that nothing in the paragraph could prejudice the right of each Party to exercise criminal jurisdiction in accordance with
its domestic law. The proposed paragraph, which had to be read as a whole, had her delegation's support.

48. Mr. OUCHARIF (Morocco) agreed with the previous speaker that the proposed text, while not ideal, could form the basis for a consensus. He was prepared to support it. If that text was not approved he would prefer to see article 4, paragraph 8, and article 2 bis, paragraph 2, deleted.

49. Mr. SCHUTTE (Netherlands), responding to the concerns expressed by the representatives of the Federal Republic of Germany, Austria and the Philippines, recalled that it had been the position of the States which had felt unable to join the consensus in the Committee at the 23rd meeting that nothing in article 4, paragraph 8, should prejudice the right of each State to exercise criminal jurisdiction established in accordance with its domestic law. The question addressed in paragraph 8 was when such an exercise of jurisdiction was an obligation under international law and when it fell under domestic law. In the first version of subparagraph (b) which had been proposed, the obligation to submit a case to the competent authorities under international law arose at the request of the requesting State. The Mexican amendment had reversed that situation: the obligation under international law was removed if opposition was expressed by the requesting State, but that did not affect the right of a State to exercise criminal jurisdiction in accordance with its domestic law. In other words, the Mexican amendment took away only the obligation under international law.

50. Mrs. GOLAN (Israel) said that her delegation supported the principle of the establishment and exercise of universal jurisdiction, but opposed any attempt to limit the extent of national jurisdiction. It therefore opposed the Mexican amendment and would prefer the text proposed by the Chairman.

51. Mr. AL-ALSHEIKH (Saudi Arabia) said that it had proved impossible during the informal consultations to find a formula that met the wishes of all concerned, and that continued to be the case. If no consensus could be reached on paragraph 8, he would prefer to see the paragraph deleted.

52. Mr. WILKITTZKI (Federal Republic of Germany) observed that if his country refused to extradite an alleged offender, it automatically had jurisdiction over the case by virtue of its domestic law. Under the proposed subparagraph (b), however, the requesting State could oppose submission of the case to the competent authorities for prosecution, which would create major problems for defence counsel.

53. In his view, a compromise solution had to be found. If the only alternative was to delete article 4, paragraph 8, and article 2 bis, paragraph 2, he would prefer, as the lesser of two evils, to accept the proposal for article 4, paragraph 8, provided the summary record and the report of the Committee reflected his delegation's understanding that neither subparagraph (a) nor subparagraph (b) could prejudice the exercise of criminal jurisdiction under domestic law, even when the requesting State had officially expressed its opposition thereto.

54. Mrs. PONROY (France) said that while the participants in the informal consultation were to be commended for their efforts to reach a compromise, the wording they had proposed was ambiguous, since it did not make clear the extent to which the requesting State could oppose the exercise of competence by the requested State. In that connection, there seemed to be a contradiction between the introductory part of the proposed paragraph 8 and subparagraph (b). If the legal experts attending the Conference were confused about the interpretation of the paragraph under discussion, how could judges and lawyers be expected to apply it? In her view, a shorter, clearer text was needed and she preferred the proposal which had been made by the Chairman.

55. Mr. BOBIASZ (Canada) said that after careful consideration he was prepared to accept the proposal of the Netherlands delegation, as amended by Mexico, on the understanding that under subparagraph (a) an obligation would arise upon failure to extradite on the grounds mentioned in article 2 bis, paragraph 2(a). It had been agreed in the informal consultation that if the compromise text was not accepted, both article 4, paragraph 8, and article 2 bis, paragraph 2, should be deleted.

56. Mr. MADDEN (Jamaica) said that the text proposed for consideration by the Committee did not, in his view, constitute an improvement, but rather a step backwards. He had the same objections to the Mexican amendment as the representative of the Philippines and, like the representative of the Federal Republic of Germany, considered that there was a contradiction between the introductory words and the right of a requesting State to oppose the submission of a case to the competent authorities. The amendment suggested by the representative of the Philippines might, however, help to solve the problem. In any event, the solution was not to delete the paragraphs in question, but to find a generally acceptable compromise. He personally preferred the wording proposed by the Chairman.

57. Mrs. PUGLISI (Italy) pointed out that both subparagraph (a) and subparagraph (b) of the proposed text had to be interpreted in the light of the introductory words. Provided it was clearly understood that nothing in paragraph 8 could prejudice the right of each State to exercise criminal jurisdiction under its domestic law, she could support the Netherlands proposal, as amended by Mexico.

58. Ms. HUSSEIN (Malaysia) said that practical problems could well arise in interpreting the proposed text. She therefore preferred the Chairman's proposal or an amendment along the lines suggested by the representative of the Philippines. However, if the only alternative was to delete both article 4, paragraph 8, and article 2 bis, paragraph 2, she could accept the proposed text, provided the interpretation of it given by the representative of the Netherlands appeared in the Committee's report. It might perhaps be helpful to some representatives if the words "unless opposed by the requesting State" were replaced by the phrase "unless otherwise requested by the requesting State".
59. Mrs. DzietaM (Cameroon) said that her chief concern was to find a formula for paragraph 8 which provided some guarantee that when a requested State refused to extradite and had established jurisdiction under article 2 bis, paragraph 2(b), the alleged offender would actually be brought to justice. She had therefore opposed the initial proposal made by the representative of the Netherlands in the informal consultation, since it made prosecution by the competent authorities conditional on a request by the requesting State. The amendment proposed by the representative of Mexico had met with her approval since it made prosecution by the competent authorities an obligation.

60. Mr. Affentranger (Switzerland) said that he shared the concerns expressed by the representatives of the Federal Republic of Germany and France. His country attached great importance to ensuring that the text of the convention did not create practical difficulties for those who applied the law.

61. Mr. Low Murttra (Colombia) said that it had proved extremely difficult during the informal consultation to find a formula that satisfied the requirements of all concerned. He agreed in essence with what the representative of Argentina had said. The phrase presenting the greatest difficulty was "unless opposed by the requesting State". In his view the wording suggested by the representative of Malaysia was not only more elegant, but might help to meet some of the points that had been raised. He considered that the Committee had already devoted sufficient attention to article 4, paragraph 8, and he hoped that its wording could now be approved.

62. Mr. DurAY (Belgium) said that he too shared the concern expressed by the representatives of France, Switzerland, Austria and the Federal Republic of Germany regarding protection of the right of each State to exercise criminal jurisdiction under its domestic law. It was essential to find a compromise and he therefore agreed with the remarks of the previous speaker.

63. Mr. MaddEN (Jamaica) said that, while the amendment proposed by Malaysia did not provide an entirely satisfactory solution, he could approve it provided it was clearly understood that the obligation "to submit the case, at the request of the requesting Party" would not in any way be interpreted as meaning that a Party, exercising its national jurisdiction, was in contravention of an obligation not to prosecute.

64. The chairman said that the Malaysian oral amendment certainly seemed better to interpret the right of the requesting Party to oppose. Its great merit was that it in no way undermined the principle of the obligation to exercise jurisdiction. The notion of opposition had been eliminated and a more elegant formulation put in its place.

65. The second serious area of concern was the right of the requested Party to exercise jurisdiction. It should be clearly understood that the introductory part of the proposed new paragraph 8 in no way modified that right, nor was the right prejudiced by the phrases at the end of subparagraph (a) and subparagraph (b). On the understanding that all the reservations which had been expressed by delegations would be included in the summary record, he asked whether the Committee approved the new version of article 4, paragraph 8, proposed as a result of the informal consultations.

66. It was so decided.

Paragraph 6 (continued) (E/CONF.82/C.1/L.21)

67. The chairman said that there had been considerable discussion of paragraph 6 during informal consultations and the proposal had even been made that the paragraph should be deleted. An amendment submitted by Yemen (E/CONF.82/C.1/L.21) had already been discussed by the Committee.

68. Mr. Schutte (Netherlands) said that it had been his understanding that the first sentence of the Yemeni amendment had been intended as an introduction to a provision concerning the extradition of nationals or on means of reducing the evidentiary requirements for extradition. If that sentence were to stand alone, it would be pointless and should be deleted.

69. Mrs. Ponroy (France) said that if the first sentence of the Yemeni amendment was adopted, the safeguard clause could be deleted, since the main clause "Parties shall facilitate ..." was sufficiently flexible. Should article 1 bis be adopted, there would be no need for any reservations in respect of article 4, paragraph 6.

70. Mr. Al-Ozair (Yemen) said that his delegation's amendment (E/CONF.82/C.1/L.21) had been modified by an oral amendment proposed by the delegation of Egypt. He read out his delegation's amendment as revised.

71. The chairman said that the substance of the second part of the Yemeni amendment, which related to the case where extradition had been refused, had already been covered by the Committee's decision in respect of article 4, paragraph 8.

72. The Committee now had to consider whether it wished to delete the second part of paragraph 6 in the draft convention, beginning with the words "To this end ...", as well as the second part of the Yemeni amendment and then whether the first part of the Yemeni amendment could stand alone. Alternatively it could decide to delete paragraph 6 in its entirety.

73. The Committee decided to delete paragraph 6.

Paragraph 7 and paragraph 7 bis (E/CONF.82/C.1/L.28)

74. The chairman said that the deletion of article 4, paragraph 7, had been proposed. Furthermore an amendment submitted by China (E/CONF.82/C.1/L.28) proposed wording for a paragraph 7 bis.

75. Mr. Oucharif (Morocco) said that the expression "a valid arrest warrant" was insufficiently precise, since it failed to indicate who was competent to pronounce on the validity of the warrant. In connection with the words "an
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Outline . . ., "sufficient to support a request for extradition" at the end of paragraph 7, it could never be assumed in advance that a request for extradition would necessarily be met. He therefore proposed that the word "valid" and the expression "sufficient to support a request for extradition" should be deleted. Requested Parties could not be expected to be familiar with the legislation of requesting Parties and a summary of the relevant legislation should, in his view, accompany the request.

76. Mr. AFFENTRANGER (Switzerland) said that paragraph 7 was one of the most important provisions in the draft convention and should be maintained.

77. Mr. ARENA (United States of America) said that, with regret, his delegation would have to favour the deletion of paragraph 7. All countries had a traditional approach to the practice of extradition. Although the intent of the paragraph was undoubtedly laudable, the detailed proceedings for extradition could not be dismissed in so simplistic a fashion. The United States Supreme Court had made a number of binding pronouncements on extradition which could not be set aside.

78. Mr. YAHIAOUI (Algeria) said that it was apparently necessary to reiterate the point that Parties could not override the requirements of domestic law in order to comply with requests for extradition, for example by paring to a minimum the procedures laid down in national legislation.

79. The only type of arrest warrant which would be acceptable would be one which validly complied with the requirements of the law of the requested Party. Any other interpretation of the situation would be tantamount to accepting in advance a final judgement by the courts of the requesting Party. The requested Party had the right, finally, to know the precise standing of the authority providing the "outline of the facts constituting the alleged offence".

The meeting rose at 1 p.m.

26th meeting
Monday, 12 December 1988, at 3.15 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4 (continued)

Paragraph 7 (continued)

1. Mr. SAINT-DENIS (Canada) said that paragraphs 6 and 7 were interlinked. Since paragraph 6 had now been deleted, he believed that paragraph 7 could also be deleted.

2. Mr. BAHEYNS (France) said that, in his view, it was important to keep paragraph 7, even in an amended form.

3. Mr. OUCHARIF (Morocco), referring to his oral proposal to amend paragraph 7, said that he could also agree to deletion of the paragraph if that was the general wish in the Committee. He wondered, however, how such deletion would affect the amendment submitted by China (E/CONF.82/C.1/L.28).

4. The CHAIRMAN agreed that the effect of the new paragraph 7 bis proposed by China must be borne in mind when considering paragraph 7.

5. Mr. FOFANA (Senegal) considered paragraph 7, as drafted by the expert group, a crucial part of the draft convention. It stated the minimum conditions applying to the grant of extradition, and could not prejudice either the requesting or the requested Party. If the paragraph was felt to be incapable of standing alone, he suggested adding a safeguard clause recognizing the judicial constraints on contracting States.

6. Mr. ASHOUR (Libyan Arab Jamahiriya) supported the Moroccan proposal to delete the last phrase of the paragraph "to support a request for extradition". He could also agree to the deletion of the whole paragraph, if that was the desire of the Committee.

7. Mr. AL-ALSHEIKH (Saudi Arabia) said that paragraph 7 contained nothing of real importance and its deletion would facilitate matters.

8. Mr. LAVIÑA (Philippines) recalled that the amendment submitted by the United States of America to article 4, paragraph 8 (E/CONF.82/C.1/L.30) had been framed on the assumption that paragraphs 6, 7 and 9 would be deleted. What had eventually been adopted as the text of paragraph 8 was a modified version of a proposal by the representative of the Netherlands. However, that text had been approved on the basis that paragraphs 6, 7 and 9 would be deleted in consequence. Although he did not object to maintaining paragraph 7, he queried the purpose of discussing its merits any further.
9. The CHAIRMAN said that when the “package” proposal of the United States delegation had been discussed, the Committee had thought it necessary to deal separately with each of the paragraphs affected by it. The proposal to delete paragraph 7 was therefore still before the Committee. However, contrary views should be taken into account.

10. Mr. BROOME (Australia) suggested that the conflicting views in the Committee concerning the merits of paragraph 7 could be reconciled by approving only the first sentence of the paragraph, which stated the essential principle of reducing unnecessary procedural requirements. The second sentence could be deleted.

11. Mr. LIEBERT (New Guinea) considered it necessary to include a safeguard clause in the first sentence, as suggested by the representative of Senegal. While not wishing to make matters easy for drug traffickers, he had some difficulty with the second sentence, from the standpoint of human rights, as well as from a legal standpoint.

As for the amendment submitted by China (E/CONF.82/C.1/L.28) it should more properly be treated as an amendment to paragraph 7, not as an additional paragraph.

12. Mr. WILKITZKI (Federal Republic of Germany) noted that both civil law countries and common law countries were anxious not to reduce the evidentiary requirements for extradition further than their legal systems would permit. Australia, however, as a common law country seeking to promote mutual assistance on such matters, was now concluding treaties which did not provide evidentiary requirements. The proposal made by the representative of Australia was a valuable compromise, which he supported. In addition, the words “procedural and” in the first sentence could be omitted.

13. Mr. ERNER (Turkey) suggested that if the word “expedite” were substituted for “minimize” in the first sentence, the need to change procedural requirements would be obviated. He would also prefer to see the words “valid” and “final” in the second sentence and the phrase “as sufficient ... extradition” deleted.

14. Mr. DURAY (Belgium) thought that the provisions of paragraph 7 should be maintained. However, he could support the compromise proposal to delete the second sentence.

15. Mr. CASAS (Spain) doubted whether the deletion of paragraph 7 would pose any additional obstacle to extradition, since the requirements for granting it were frequently more stringent than indicated in the paragraph. Although he would prefer deletion of the entire paragraph, he could agree to the retention of the first sentence only.

16. Mr. MADDEN (Jamaica) preferred to omit the entire paragraph. He had special difficulty with the second sentence; in his country, extradition necessitated a certain amount of evidence, not merely a valid arrest warrant or an outline of the facts. The first sentence was more acceptable, but he felt that little could be done to minimize procedural and evidentiary requirements. The proposal to replace “minimize” by “expedite” had some merit, but there was also a danger that in hastening to extradite, the Parties might fail to ensure that justice was done.

17. Mr. GONZALEZ (Chile) was willing to accept either partial or total deletion of the paragraph. Extradition was subject, in any case, to the conditions referred to in paragraph 5. The second sentence of paragraph 7 was intended merely to illustrate ways of facilitating extradition. He would not object to retaining either or both sentences.

18. Mr. BAHEYENS (France) supported the proposal of the representative of Australia, and suggested that the reference to procedural requirements could be omitted.

19. Mr. BRUCE (Ghana) considered that to spell out the procedural requirements for extradition was to trespass on the reserved domain of the Parties, whose co-operation in the matter of extradition was in any case mandatory under paragraph 10. He did not think the competent authorities should be told how to act. As a compromise, he could support the retention of the first sentence of paragraph 7.

20. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee agreed to delete the second sentence of paragraph 7.

21. It was so agreed.

22. The CHAIRMAN noted that several amendments to the first sentence had been proposed, including the addition of a safeguard clause. The word “minimize” could be replaced by some other verb, such as “expedite”, “simplify”, or “reduce”. He suggested that the reference to procedural requirements should be eliminated, leaving only the reference to evidentiary requirements.

23. Mr. ERNER (Turkey) said that it was not possible to simplify requirements which were imposed by domestic law. He considered “expedite” a more appropriate verb.

24. Mr. LAVÍÑA (Philippines) agreed. He suggested the wording “Parties shall endeavour to expedite extradition”.

25. Mr. OUCHARIF (Morocco) said that the word “expedite” might lead to some misunderstanding. The Parties could expedite only their extradition procedures. The reference to evidentiary requirements could be omitted.

26. Mr. AFFENTRANGER (Switzerland) said that he had accepted, although with some regret, the compromise proposal to delete the second sentence of paragraph 7. As for the first sentence, its basic thrust must be preserved. The intention of the drafters had been to identify and simplify the procedural obstacles to extradition. Some States had very formal procedures, such as detailed requirements in the matter of identification. Such requirements could cause extradition requests to fail, and that was why it was necessary to mention them. While he might agree to some compromise wording, he would prefer the Committee to approve the first sentence in its present form.
27. Mr. DURAY (Belgium) said that it was undesirable to reduce the scope of the first sentence. If the word “minimize” was replaced by the word “expedite” it could apply only to “procedural requirements”. It would be better to use the verb “expedite” before the words “procedural requirements” and the verb “simplify” before the words “evidentiary requirements”.

28. The CHAIRMAN suggested that the first sentence should read: “With respect to offences established in accordance with article 2, paragraph 1, the Parties shall endeavour to expedite extradition procedures and simplify evidentiary requirements related thereto.”

29. Mr. FAIOLA (Italy), Mr. OUCHARIF (Morocco), Mr. BAEYENS (France), Mr. FOFANA (Senegal), Mr. ERNER (Turkey), Mr. AL-ALSHEIKH (Saudi Arabia), Mr. AFFENTRANGER (Switzerland), Mr. AL-MUBARAKI (Kuwait), Mrs. OLIVEROS (Argentina), Mr. DURAY (Belgium), Mr. AL-SHARARDA (Jordan), Mr. OULD BAHI (Mauritania) and Mr. YU Jingming (China) supported the Chairman’s suggestion.

30. Mr. SCHUTTE (Netherlands) said that the words “With respect to offences established in accordance with article 2, paragraph 1” repeated most of article 4, paragraph 1, and might therefore be deleted.

31. Mr. WILKITZKI (Federal Republic of Germany) said that he supported the wording suggested by the Chairman. However, he too felt that the words mentioned by the Netherlands representative might perhaps be deleted.

32. Mr. SAINT-DENIS (Canada) said that his delegation would prefer the deletion of paragraph 7 but was prepared to accept the Chairman’s suggestion in a spirit of compromise.

33. Mr. LAVINA (Philippines) approved the wording suggested by the Chairman.

34. Mr. SCHUTTE (Netherlands) suggested that the paragraph should be referred to the Drafting Committee for a decision on the question of inclusion of the words “With respect to offences established in accordance with article 2, paragraph 1”.

35. The CHAIRMAN said that, in the absence of objection, he would take it that, subject to the Drafting Committee’s views regarding the retention of the words “With respect to offences established in accordance with article 2, paragraph 1”, the Committee approved the following text for article 4, paragraph 7:

“With respect to offences established in accordance with article 2, paragraph 1, the Parties shall endeavour to expedite extradition procedures and simplify evidentiary requirements related thereto.”

36. It was so decided.

Paragraph 7 bis (continued) (E/CONF.82/C.1/L.28)

37. Mr. YU Jingming (China), introducing his delegation’s amendment in document E/CONF.82/C.1/L.28, said that the object of paragraph 7 was to improve the procedure for extradition in combating illicit traffic in narcotic drugs. It was important to provide for the offender to be taken into custody or for other measures to be taken to ensure his presence until extradition proceedings were instituted. The measures in the proposed new paragraph 7 bis were stipulated in other conventions and bilateral treaties. He referred in particular to article 7 of the International Maritime Organization (IMO) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

38. Mr. OUCHARIF (Morocco) approved the substance of the Chinese amendment but would like to see some changes in its wording. The word “valid” qualifying the words “arrest warrant” would lead to confusion, as would the words “the offender or the alleged offender”. Moreover, the paragraph failed to mention that the request should be in keeping with the domestic law of the requested Party.

39. Mr. WILKITZKI (Federal Republic of Germany) said that his delegation was not opposed to a reference in the convention to provisional arrest, but the proposed paragraph could lead to difficulty in that it might create an obligation for the requested Party to arrest an alleged offender. The provision should be rephrased in less stringent language.

40. Mrs. JONES (United Kingdom) said that she had no difficulty with the substance of the proposed amendment and supported it in principle. Measures should exist to ensure the presence of persons for extradition proceedings. She suggested the insertion after the words “the requesting Party” in the fourth line of the words “to take such measures as may be necessary to enable its competent authorities to”.

41. Mr. FOFANA (Senegal) said that he supported the Chinese amendment but would like to see some simplification of the wording. He also suggested the rephrasing of the latter part of the paragraph to read: “during extradition procedures measures to ensure the presence of the alleged offender shall be taken in accordance with the domestic legislation of the requested Party”.

42. Mr. ARENA (United States of America) said that he could not accept the Chinese amendment. It was too detailed and could not be implemented in the United States because it would violate the Fifth Amendment of the Constitution and his country’s extradition statutes.

43. Mr. SCHUTTE (Netherlands) said that he supported the Chinese proposal, subject to the modification suggested by the United Kingdom representative. He would also like to see the insertion of the word “provisionally” after the words “take him” in the fourth line.

44. Mr. AL-ALSHEIKH (Saudi Arabia) said that he associated himself with the views expressed by the Moroccan representative.

45. Mr. MADDEN (Jamaica) said that he was sympathetic to the Chinese proposal but wondered if it would be
more suitable, for inclusion in domestic law. There would be a problem in Jamaica in implementing such a provision in the covenant since much more evidence would be required to take a person into custody than an arrest warrant.

46. Mr. FAIOLA (Italy) supported the principle of the amendment submitted by China, but said that, for the reasons which had made him reluctant to see the second sentence of paragraph 7 included in the convention, he would be reluctant to see that amendment made to the text.

47. Mrs. OLIVEROS (Argentina) welcomed the Chinese amendment and approved the sub-amendments which had been proposed. She believed that brief consultations among interested delegations would result in production of a generally acceptable wording for the new paragraph 7 bis.

48. Mr. OSHIKIRI (Japan) welcomed, in principle, the amendment submitted by China. He felt, however, that the terms "offender" and "alleged offender" could give rise to difficulties of interpretation, that the qualification "valid" might also be subject to controversy, and that a reference to extradition treaties might usefully be introduced in the final clause of the paragraph. The text as a whole could perhaps be simplified.

49. Mr. MGBKWERE (Nigeria) also welcomed the Chinese amendment. He supported the suggestions made by the representatives of the United Kingdom and the Netherlands.

50. The CHAIRMAN, noting that there appeared to be a substantial consensus on the substance of the Chinese amendment, invited interested delegations to consult informally with a view to producing, as rapidly as possible, a wording which the Committee might approve.

**Paragraph 9**

51. The CHAIRMAN noted that paragraph 9 appeared in the draft convention in square brackets. The Committee might therefore consider, inter alia, whether the provision should be maintained.

52. Mr. SCHUTTE (Netherlands) said that the paragraph was carefully worded, was protective of the prerogatives of domestic law, and called merely for consideration of the procedure which it outlined. In his view the paragraph should be approved. The essential objective was to complement the provisions of article 4, paragraph 8, which addressed the situation of alleged offenders but was silent on cases where an offender, having already been convicted in one State but having escaped from or not having been committed to prison, was sought for the purposes of enforcing a sentence. The aim was to plug a possible loophole; and to permit States whose legislation allowed them to do so, or which contemplated the enactment of such legislation, to make use of the opportunity of co-operation outlined in the paragraph. They would thereby avoid being unable, because of double jeopardy, to submit the case to their competent authorities for re-trial, or constrained to try the individual involved again—perhaps with acquittal as a result—when they would have preferred to enforce the totality or the remainder of the sentence already imposed. His delegation's support for the paragraph was motivated by the same desire that had underlined its support for paragraph 11; namely, to accord an element of international status to a new form of bilateral and multilateral co-operation which was developing among countries.

53. Mr. OUCHARIF (Morocco) said that the Conference had heard considerable discussion of the principle of universal jurisdiction as opposed to the principle of applicability of domestic law, much having been said in defence of the prerogatives of the latter. He felt that the proposed paragraph 9 might give rise to considerable difficulties and to a reopening of that discussion. In his view, the actions called for should in the first place be a matter for bilateral agreements or—better still—for the overall harmonization of the domestic laws of different countries. He was by no means opposed to the principle underlying the paragraph, but thought that inclusion of the provision in the convention would be premature. He favoured its deletion.

54. Mr. FOFA NA (Senegal) felt, on the contrary, that paragraph 9 was useful and struck a happy balance with paragraph 11.

55. Mr. LAVIÑA (Philippines) endorsed the remarks of the representative of Morocco. The action proposed in paragraph 9 was innovatory. He felt that there was not as yet enough experience of the arrangements envisaged in relations between States and that the provisions entailed a risk of a violation of national sovereignty. For all those reasons, he would prefer to see the paragraph deleted.

56. Mr. MADDEN (Jamaica) thought the paragraph should be maintained. It was couched in mild language, imposed no obligation of consequence, and left States every latitude to refer to their own domestic laws. He saw the text as being in the nature of a "post-conviction" equivalent of article 4, paragraph 8. He acknowledged that the application of the arrangements envisaged might not as yet be possible for certain States, but he believed that the possibility should certainly be written into the convention.

57. Mr. ARENA (United States of America) said that his delegation had initially favoured deletion of paragraph 9, but it now had no substantial objection to its retention. He pointed out, however, that for consistency with the agreed provisions of article 2 bis, paragraph 2, the reference to habitual residence should be deleted.

58. Mr. AL-ALSHEIKH (Saudi Arabia) agreed with those who favoured deletion of the paragraph.

59. Mr. BALEYENS (France) said that his delegation would not object to the deletion of paragraph 9. If the paragraph was retained, he would prefer the central part to be amended to indicate not that the requested Party should "consider the enforcement of the sentence or the remainder thereof", but rather that, if that Party did not apply the
provisions of paragraph 8, it would entrust to its competent authorities the task of doing so.

60. The CHAIRMAN suggested that the element of obligation in the text of paragraph 9 was relative: the requested Party was called upon only to "consider" enforcement. His understanding of the French proposal was that it introduced a more mandatory tone.

61. Mr. OUCHARIF (Morocco) shared that understanding, and said that, for that reason, he could not accept the French proposal. The sovereignty of domestic law and legal practice were at stake.

62. Mrs. GOLAN (Israel), noting that paragraph 9 was giving rise to some controversy, said that her delegation could accept it if the provision was clearly understood to be optional in character and in no way constituted an infringement of domestic law. It could not support the amendment proposed by the representative of France.

63. Mr. CASAS (Spain) said that paragraph 9 should be maintained, if only to ensure that the convention reflected the principle of universal justice at least as a palliative to shortcomings in domestic law. His delegation would have difficulty in accepting the French amendment.

64. Mrs. PONROY (France) said that, like the representative of the Netherlands, her delegation believed that the provision in paragraph 9 offered a solution in situations where the extradition of a person already sentenced might be refused. Article 4, paragraph 8, as approved, provided that if extradition were refused, the requested State must submit the case to its authorities for prosecution. What was suggested in paragraph 9 was an alternative to re-trial; namely, the enforcement of a sentence, or a part thereof, by the requested State. Her delegation's concern had been with the fact that the wording of paragraph 8 was of a relatively binding nature, whereas that of paragraph 9 seemed only optional. States which were in a position to accept the type of procedure envisaged in paragraph 9, namely the enforcement of foreign sentences, should not be called upon only to consider that eventually. Her delegation felt that a stronger provision was called for.

65. The CHAIRMAN pointed out that the text of article 4, paragraph 8, as approved, dealt with alleged offenders, a term which thus appeared to confine its provisions to persons not yet convicted or sentenced. That might create a difficulty so far as the linkage with paragraph 9 was concerned.

66. Mr. LAVIÑA (Philippines) submitted that it would be an unacceptable imposition on States to call on them to ensure the enforcement of a sentence, or a part thereof, without the opportunity of holding a fresh trial. Even the notion of limited exercise of universal jurisdiction had been excluded from article 4, paragraph 8; now that notion had surfaced again in the draft of paragraph 9. He had already expressed opposition to the inclusion of the paragraph in the convention and he might, if necessary, even press the matter to a vote.

67. The CHAIRMAN said that paragraph 9 certainly appeared to create problems for some delegations and it would be difficult to redraft it at the present stage in order to meet their concerns. A possible way out might therefore be to delete the paragraph.

68. Mr. SCHUTTE (Netherlands) said that his delegation had no objection to the deletion of the words "or has his habitual residence in its territory" in paragraph 9.

69. In his view the paragraph was not concerned with universal jurisdiction but only with cases where extradition was refused because the person sought was a national of the requested Party. If the latter Party had jurisdiction, it was on the basis of the nationality principle and not on the basis of universality. He believed that under the law of a number of States the mere fact that a person had been convicted for an offence, without having served any part of his sentence, was a bar to prosecution under paragraph 8. If that were the case, it was essential to plug the loophole in the convention and so make it a credible weapon against criminals. Paragraph 9 should be adopted at least for the benefit of countries that were in a position to recognize a foreign judgement.

70. Although the concept of enforcing the criminal judgements of other States had not yet been universally accepted, he believed that it would spread in years to come, and he urged delegations not to delete the paragraph, which might provide an opening for further international co-operation in the future.

71. Mr. LAVIÑA (Philippines) considered that the deletion of paragraph 9 would not create any loophole. Recognition and enforcement of foreign judgements, as he understood that notion, referred only to civil and not to criminal matters. He considered it unlikely that a State which had not exercised jurisdiction or initiated prosecution would be barred from action by a claim of double jeopardy. He could not accept paragraph 9.

72. The CHAIRMAN, having called for an indicative vote on the inclusion of paragraph 9 in the convention, noted that there appeared to be a majority in favour of inclusion of that provision, which, he stressed, was not couched in mandatory terms.

73. Mr. OUCHARIF (Morocco) said that since the majority favoured inclusion of the paragraph, he could accept it if it incorporated the phrase "in conformity with the requirements of the domestic legislation of the requested Party". The present wording suggested some form of international undertaking, whereas the Parties were only at the very beginning of cooperation in that area and most legislations barred the extradition of nationals.

74. Mr. FAIOLA (Italy) suggested, as a compromise solution, that the provisions of paragraph 8 concerning submission of a case to the competent authorities should apply to the situation envisaged in paragraph 9, where extradition sought for the purpose of enforcing a sentence was refused.
75. Mr. LAVINÁ (Philippines) proposed the deletion of the last sentence of paragraph 9. Where an accused was convicted by State A and was found in State B, State B could not enforce the sentence under the provisions of its own laws since there was no conviction in State B.

76. Mr. ASHOUR (Libyan Arab Jamahiriya) said that his delegation had favoured deletion of the last sentence because it limited the choice of the requested Party by calling on it to enforce the sentence. He would like the paragraph to be amended so as to allow the requested Party more flexibility to enforce its own legislation.

77. Mr. AL-MUBARAKI (Kuwait) said that his delegation could approve paragraph 9 only if the Moroccan amendment was adopted.

78. Mr. ALLAM (Egypt) and Mr. AL-ALSHEIKH (Saudi Arabia) associated themselves with the views of the representative of Kuwait.

79. Mr. MGBOKWERE (Nigeria) said that his delegation favoured deletion of the last sentence in the convention. He drew attention to the fact that it included the phrase "if its law so permits". It was not clear to him where in the text the wording proposed by the Moroccan representative was to be inserted.

80. Mr. CAJIAS KAUFFMANN (Bolivia) said that he supported the retention of paragraph 9. The provision was optional, but it indicated an opportunity for co-operation to which he believed the convention should refer.

81. Mr. AL-SHARARDA (Jordan) said although his delegation had favoured deletion of paragraph 9, it could accept it amended as proposed by the Moroccan representative.

82. The CHAIRMAN suggested that the Committee should agree to the deletion of the words "or has his habitual residence in its territory" in paragraph 9.

83. It was so agreed.

84. The CHAIRMAN recalled that the deletion of the second sentence of paragraph 9 had also been proposed.

85. Mr. SCHUTTE (Netherlands) suggested that the word "procedural" should be inserted before the word "conditions" in the second sentence.

86. Mr. LAVINÁ (Philippines) considered that that change would not alter the substance of the provision.

87. Mr. OUCHARIF (Morocco) said that a reference to procedural conditions alone was insufficient, since other matters such as public order and sovereignty were involved. He could not support the Netherlands amendment.

88. Mr. SCHUTTE (Netherlands) said that he took the Moroccan representative's point and could agree to the deletion of the second sentence of paragraph 9, subject to modification of the first sentence as he had proposed.

89. The CHAIRMAN called for a decision by the Committee on the French amendment.

90. Mr. BAEYENS (France) withdrew his delegation's amendment but emphasized that in its view the position of the persons covered by article 4, paragraph 8, and that of those covered by article 4, paragraph 9, was not the same.

91. The CHAIRMAN said that the Committee still had to consider the addition to the paragraph proposed by the Moroccan representative. He suggested that the wording might be: "If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is not 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".

92. Mr. OUCHARIF (Morocco) expressed approval of that wording.

93. Mr. ERNER (Turkey) suggested that the new wording proposed was tautological.

94. Mr. MADDEN (Jamaica) said the point to be made was that the action envisaged could be taken only if the law permitted; the action could not conform with the law if the law did not permit it. He approved the wording suggested by the Chairman.

95. Mr. ERNER (Turkey) indicated that he too could accept that wording.

96. The wording for article 4, paragraph 9, suggested by the Chairman was approved.

Article 2, paragraph 7 (concluded) (E/CONF.82/C.1/L.9)

97. The CHAIRMAN recalled that in document E/CONF.82/C.1/L.9 the representative of Jamaica had submitted an amendment to article 2, paragraph 7, which still had to be considered in relation to article 4, paragraphs 4 and 5.

98. Mr. MADDEN (Jamaica) introducing his delegation's amendment, said that, even in the case of an offence not deemed to be political, the convention should provide that if a requested State had substantial grounds to believe that action on its part would facilitate prosecution of a person on the grounds of his race, religion, nationality or political opinions, it might refuse to comply with the request for extradition. Such a provision had been incorporated in the Commonwealth scheme for the rendition of fugitive offenders and he believed that most countries would acknowledge the principle.

99. Mrs. GOLAN (Israel) approved the provision proposed by Jamaica, which was similar to provisions to be found in bilateral and multilateral conventions on extradition.
100. Mr. KAPPELRUD (Norway) said that the Nordic countries had reserved their position with respect to the substance of article 2, paragraph 7. They intended to revert to the matter when the Committee took action on article 4, paragraph 5. The two provisions might be considered in conjunction.

101. The CHAIRMAN suggested that the Committee should first agree on the substance of the Jamaican amendment and then consider article 4, paragraph 5.

The meeting rose at 6 p.m.

27th meeting
Monday, 12 December 1988, at 8.15 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 4 (concluded)

Additional paragraph proposed by Jamaica (E/CONF.82/C.1/L.9)

1. The CHAIRMAN asked the Committee to continue its consideration of the Jamaican amendment (E/CONF.82/C.1/L.9) which had originally been considered under article 2, paragraph 7. It was now proposed that it should become a new paragraph of article 4; certain amendments to the drafting would be required.

2. Mr. SEARS (Bahamas) said that the proposed text had its roots in the Commonwealth Scheme for the rendition of Offenders and was reflected in several bilateral agreements to which his country was party. He therefore supported the proposed amendment.

3. Mr. ARENA (United States of America) said that while he supported the concepts contained in the proposed amendment, and while such provisions might be appropriate within the context of the Commonwealth, the proposed amendment was inappropriate in a multilateral instrument. Sufficient safeguards existed in the provision that extradition should be subject to the conditions provided for by the law of the requested Party; he therefore maintained his objection to the proposal.

4. Mr. GAUTIER (France) recalled that his delegation had wished to retain a reference to the right of asylum under article 2, paragraph 7. The Jamaican proposal went some way towards re-establishing a balance between rigour and humanitarian considerations, which had been disturbed by the deletion of article 2, paragraph 7, and he therefore supported it.

5. The CHAIRMAN noted that a consensus did not exist; he asked whether the Committee was ready, nevertheless, to approve the proposed text.

6. It was so agreed.

Paragraph 7 (continued) (E/CONF.82/C.1/L.28)

7. Mr. LIU Daqun (China) said that, following informal discussions, his delegation's amendment in document E/CONF.82/C.1/L.28 had been revised to read:

"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. Mr. GAUTIER (France) said that the revised text met the constitutional objections raised by a number of Parties. He supported the revised proposal.

9. Mr. OUCHARIF (Morocco) suggested that the phrase "at the request of the requesting Party" should be modified to "at the request of the competent authorities of the requesting Party" in order to stress that the due procedures must be followed.

10. Mr. AL-ALSHEIKH (Saudi Arabia) supported the Moroccan suggestion, and wondered if there was any time limit on the custody into which a person whose extradition was sought could be taken.

11. Mr. AFFENTRANGER (Switzerland) supported the Chinese proposal as amended.

12. The proposed new paragraph 7 bis was approved as amended.

Paragraph 3 (continued) (E/CONF.82/C.1/L.27)

13. Mr. FOFANA (Senegal), introducing his delegation's proposed amendment in document E/CONF.82/C.1/L.27, said that it was intended as a compromise proposal to meet the concerns both of those who favoured the word "may" and of those who favoured the word "shall" in the original proposal in document E/CONF.82/3.
14. Mr. BOBIASZ (Canada) said that a number of delegations had come together to develop an alternative compromise wording. It was proposed to use the word "may" in the text in document E/CONF.82/3 and to add a second sentence which would read: "The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation".

15. Mr. LOW MURTRA (Colombia) said that the text proposed by Senegal could not be applied under Colombian law.

16. Mrs. JONES (United Kingdom) supported the Canadian proposal. She found the amendment submitted by Senegal unclear and unacceptable.

17. Mr. MULAT (Ethiopia), supported by Mr. AL-OZAIR (Yemen), Mrs. HUSSEIN (Malaysia), Mr. OERIP (Indonesia), Mr. AL-AL-SHEIKH (Saudi Arabia), Mr. LITZKA (Austria), Mr. ASHOUR (Libyan Arab Jamahiriya) and Mr. WIENIAWSKI (Poland), proposed that the text in document E/CONF.82/3 should be adopted using the word "may".

18. Mr. ARENA (United States of America) said that he also would prefer the original text with the word "may". The final sentence of the amendment submitted by Senegal was unclear. If an additional sentence was necessary, he would prefer the wording proposed by the representative of Canada.

19. Mr. de la GUARDIA (Argentina) said that he would prefer the original text using the word "shall", but could accept the word "may".

20. Mr. FOFANA (Senegal) said that, in view of the discussion, he would support the Canadian proposal.

21. Mr. BRUCE (Ghana) supported retention of the word "may" in the original text, and noted that paragraph 10 of article 4 also encouraged Parties to take measures to enhance the effectiveness of extradition.

22. Mr. VICTOR (Sweden) said that he would prefer the use of the word "shall" in the original text, but noted that his was the minority view. The Canadian proposal was an acceptable compromise.

23. Mrs. PONROY (France) noted that it had been decided to use the word "shall" in subparagraph (f) of article 3, paragraph 4, and recalled that some delegations had expressed reservations in that regard. The provisions of article 4, paragraph 3, were analogous, and the word "shall" in the original text should therefore be retained. The convention should not be drafted solely in terms of existing legislation and, if States continued to refuse to adapt their national legislation, no progress in international co-operation could be made.

24. Mr. WILKITZKI (Federal Republic of Germany) said he would prefer retention of the original text with the word "shall", and agreed that there was a lack of balance between articles 3 and 4. He could, however, support the Canadian proposal.

25. Mr. AFFENTRANGER (Switzerland) said he agreed with the points made by the representative of France, but was ready to join the representatives of Sweden and the Federal Republic of Germany in accepting the Canadian proposal in the interests of reaching a consensus.

26. Mr. LOW MURTRA (Colombia) said he also agreed with the representative of France that the word used should logically be "shall", but could accept the Canadian proposal in the interests of consensus.

27. Mr. TIMERBAEV (Union of Soviet Socialist Republics) said that he would prefer the original text using the word "may", but had no problem with the Canadian proposal. He wondered if subparagraph (f) of article 3, paragraph 4, should be brought in line by the replacement of the word "shall" by the word "may".

28. Mr. KAPELRUD (Norway) said that he would prefer retention of the word "shall" in the original text, but could accept the Canadian compromise proposal.

29. Mr. KURITTU (Finland) supported the Canadian proposal.

30. Mr. SCHUTTE (Netherlands) supported the Canadian proposal, but noted that Parties which required detailed legislation in order to use the convention might already have such legislation in place; it would then be inappropriate to ask them to "consider enacting" such legislation.

31. The CHAIRMAN asked if the Committee could accept the Canadian proposal with the addition of the words "as may be necessary" at the end of the second sentence.

32. It was so agreed.

Paragraph 5 (continued)

33. The CHAIRMAN recalled that the text had been approved by the Committee; with regard to the phrase in brackets at the beginning of the paragraph, it had been suggested at the 15th meeting that that phrase should be replaced by wording beginning "Without prejudice to the provisions of . . .", with the provisions in question remaining to be specified.

34. Mr. SCHUTTE (Netherlands) suggested that the introductory phrase should read "Without prejudice to the provisions of article 2, paragraph 7".

35. Mr. KAPELRUD (Norway), speaking on behalf of the Nordic countries, recalled that those countries had reserved their position on article 2, paragraph 7. The Nordic countries, on principle, did not accept any restriction on their absolute freedom to assess which offences were political or politically motivated, and had consequently never accepted any language attempting to define such offences in any treaty or other international instrument to which they were Parties. Safeguards clauses in that regard, as a matter of principle, were unacceptable. As the references to political or politically motivated
offences in article 2, paragraph 7, were unacceptable to the Nordic countries, no reference to article 2, paragraph 7, should be made in paragraph 5 of article 4.

36. Mr. AL-OZAIR (Yemen), supported by Mr. WILKITZKI (Federal Republic of Germany), Mr. GAUTIER (France), Mr. ASHOUR (Libyan Arab Jamahiriya), Mr. DURAY (Belgium), Mr. AFFENTRANGER (Switzerland), Mr. VIANA DE CARVALHO (Brazil), Mr. FAIOLA (Italy) and Mr. BOBIASZ (Canada), proposed that the text in square brackets should be deleted and that the paragraph should therefore begin with the words "Extradition shall be subject . . .".

37. Mr. SCHUTTE (Netherlands) withdrew his suggestion; he agreed that the text in square brackets should be deleted.

38. Mr. LITZKA (Austria) expressed agreement with the principle stated by the Nordic countries and supported deletion of the text in square brackets.

39. The CHAIRMAN said he took it that there was a consensus in favour of the deletion of the text in square brackets.

40. It was so agreed.

Title of article 4

41. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed that the article should be entitled "Extradition".

42. It was so agreed.

43. Mr. KAPELRUD (Norway) wondered if it might be appropriate for the Committee to review its position in respect of the reference made to article 4 in article 2, paragraph 7.

44. The CHAIRMAN said that article 2, paragraph 7, had been approved by the Committee and that the reservations expressed had been recorded.


46. Mr. VICTOR (Sweden) supported the United Kingdom amendment.

47. Mr. OUCHARIF (Morocco) said that the text in document E/CONF.82/C.1/L.1/Rev.2, as amended by the United Kingdom, was excellent; however, he thought that the article should be placed later in the convention.

48. Mr. de la GUARDIA (Argentina), speaking as a co-sponsor of the proposal in document E/CONF.82/C.1/L.1/Rev.1, supported the United Kingdom amendment.

49. Mrs. HUSSEIN (Malaysia), speaking as a co-sponsor of document E/CONF.82/C.1/L.1/Rev.2, commended the United Kingdom amendment, but said that certain provisions of other articles of the convention might be made redundant as a consequence of the revised text.

50. Mr. LOW MURTRA (Colombia), speaking as a co-sponsor of document E/CONF.82/C.1/L.1/Rev.2, welcomed the United Kingdom amendment.

51. Mr. SUN Lin (China) welcomed document E/CONF.82/C.1/L.1/Rev.2 and the United Kingdom amendment. He said that the amendment added precision and balance. The meeting rose at 10 p.m.

28th meeting
Tuesday, 13 December 1988, at 10.20 a.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (E/CONF.82/3 and Corr.1) (continued)


1. Mr. SHING (Mauritius) said that his delegation supported the 42-nation proposal (E/CONF.82/C.1/L.1/Rev.2 and Add.1).

2. Mr. POPOV (Bulgaria) said that his delegation could support the amendment submitted by the United Kingdom (E/CONF.82/C.1/L.31) if the words "measures, including legislative and administrative measures," were amended to read "legislative, administrative and other measures."

3. Mr. AL-OZAIR (Yemen) said that, although some of the amendments before the Committee had merit, his delegation preferred the comprehensive wording proposed in the basic text.
4. Mr. HUGLER (German Democratic Republic) said that his delegation favoured the 42-nation proposal as amended by the United Kingdom.

5. Mr. MEYER (United States of America) said that his delegation did not believe that an article on the scope of the convention was necessary in an instrument of the present type, although he saw merit in the amended text referred to by the previous speaker. The main difficulty which his delegation found with that text was the prevailing negative tone of the wording. It had accordingly redrafted the text with the aim of giving it a more positive mode of expression.

6. The first sentence of paragraph 1 would read: "The purpose of the present Convention is to assist States Parties to address more effectively the various aspects of the drug abuse problem having an international dimension."

7. The second sentence of paragraph 1 would be worded as in the United Kingdom proposal (E/CONF.82/C.1/L.31).

8. Paragraphs 2 and 3 would read:

"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 independent exercise and performance of functions which are reserved for the authorities of that other State Party by its national law and regulations."

9. One slight new element had been introduced into paragraph 2, namely the word "independent", which was intended to ensure that there was no possible conflict between article 1 bis and article 6, which dealt with joint operations. Apart from that, no element previously present in the 42-nation proposal had been omitted or modified.

10. Mr. AL-ALSHEIKH (Saudi Arabia) said that his delegation found the wording proposed in the basic text comprehensive and satisfactory in all respects. If agreement could not be reached on it, his preference would be for the 42-nation proposal.

11. Mr. GUNEY (Turkey) said that objections had been raised to the inclusion of an article on the scope of the convention on the grounds that it was unnecessary and also unusual for a convention of the present kind. Although he found merit in those arguments, he would not stand in the way of a consensus provided that the United Kingdom proposal (E/CONF.82/C.1/L.31) was approved. The wording proposed by the United States delegation appeared to represent a further improvement on the text, which should be discussed when a written version was available.

12. Mr. LAVINHA (Philippines) said that the basic text of the article as drawn up by the Review Group on the draft convention contained a large number of phrases left in square brackets, reflecting the divergent views put forward in that body. Despite that, the article had fostered the hope that at last the critical drug situation might be about to stimulate the international community to adopt a universal approach to the drug problem, and that individual States would consent to sacrifice a small proportion of their sovereignty in order to eradicate the scourge which that problem had become.

13. At the point at which the proposed article 1 bis had been presented to various delegations for approval in the form subsequently reproduced in document E/CONF.82/C.1/L.1/Rev.2, it had immediately become clear that practical considerations had given way to vague generalizations. Even universal principles had been held in check at every turn by references to the supremacy of domestic law. Clearly the international community was not yet ready to abandon the narrow confines of national sovereignty in order to combat, if not eradicate, the illicit traffic in drugs which it had stigmatized as a crime against humanity. The wording approved for articles 2, 2 bis, 3 and 4 made it abundantly clear that national sovereignty and domestic law had won the day. If that trend represented the views of the majority, the proposed article 1 bis was a logical provision in which to define the scope of the convention, and his delegation would accept it reluctantly. It could certainly accept the proposal by the United Kingdom, which paid homage to the fundamental provisions of national legal systems but at the same time insisted that Parties should take the legislative and administrative measures incumbent upon them.

14. Mr. IKOSSIPENTARCHOS (Greece) said that his delegation favoured the 42-nation proposal. It would consider the United States proposal carefully when it was available in writing.

15. Mr. BERRADA (Morocco) said that his delegation had no difficulty in accepting the United Kingdom proposal, but would like to suggest a slight variant of it: "States Parties shall adopt all necessary measures, including legislative and administrative measures, in accordance with the fundamental provisions of the law."

16. Mr. POPOV (Bulgaria) said that if the United States proposal found favour with the Committee, his delegation would certainly not oppose it.

17. Mr. BRUCE (Ghana) said that the Conference had been convened to find a common basis for overcoming a common problem, that of drug abuse. One solution which had not yet been given sufficient emphasis was education. His delegation lent full support to the amendment proposed by the United Kingdom. It would give careful consideration to the United States proposal when it was available in writing.

18. Mr. SCHAAD (Federal Republic of Germany) said that initially he had thought that the 42-nation proposal (E/CONF.82/C.1/L.1/Rev.2 and Add.1) amounted to making the convention subject to domestic law, a state of affairs which would not have been acceptable to his delegation. He had, however, been persuaded by the
arguments and assurances of the Canadian delegation, among others, that the proposal was not intended to prepare the way for derogation by Parties from the obligations established in the convention. As amended by the United Kingdom, the 42-nation proposal expressed more clearly than before the intentions to which the Canadian statement had referred, and it accordingly had his support.

19. He thought, however, that from a systematic point of view and with regard to its substance and purpose, the text of the amended proposal might be better situated among the final clauses than at the beginning of the convention. He too would examine the United States proposal when it was available in writing.

**Article 3, paragraph 1 (continued)**

(E/CONF.82/C.1/L.2)

20. Ms. HUSSEIN (Malaysia) said that at its 6th meeting the Committee, in approving the wording for article 3, paragraph 1(b), proposed by the delegation of the German Democratic Republic (E/CONF.82/C.1/L.2), had deleted the words “derived from or” from the text proposed by that delegation (E/CONF.82/C.1/SR.6, para. 31). Her delegation had expressed its reservations on that deletion pending the outcome of the discussion on drug cultivation. Since then, the Committee had approved, in article 2, a paragraph 1(a)(i) bis which made the cultivation of the opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs an offence (E/CONF.82/C.1/SR.24, para. 25). Consequently, it would be appropriate to reintroduce the words “derived from or” in article 3, paragraph 1(b).

21. The CHAIRMAN said that, although the summary record of the 6th meeting indicated that the words in question had been deleted, his recollection was that the deletion had been conditional on a final decision being taken on those words in the light of the outcome of the Committee’s work on article 2.

22. Mr. BAEYENS (France) said that his recollection coincided with that of the Chairman. His delegation approved the deletion of the words “derived from or”.

23. Mr. OSHIKIRI (Japan) said that his delegation opposed the proposal to reintroduce those words. Article 3, paragraph 1, concerned confiscation: subparagraph (a) dealt with that of proceeds and was intended to deprive the offender of the benefit of his illicit acts; subparagraph (b) dealt with the confiscation of drugs, psychotropic substances, materials and equipment or other instrumentalities. In the latter case, the reason for confiscation was the danger resulting from the use of those drugs, substances, and so on. In that context, it would be inappropriate for the provision to cater for substances derived from offences established in accordance with article 2, paragraph 1.

24. Mr. SCHUTTE (Netherlands) said that, for the same reasons as the Japanese representative, he opposed the reintroduction of the words “derived from or” into paragraph 1(b). They were not to be found in the corresponding provision—article 37—of the 1961 Single Convention. He drew attention to the fact that in the Committee’s draft report, the text of article 3, paragraph 1(b), approved by the Committee appeared without the words in question (E/CONF.82/C.1/L.18/Add.2, para. 70).

25. The CHAIRMAN said that in the draft report the words “in any manner” should have appeared after the words “intended for use” in the text of article 3, paragraph 1(b), approved by the Committee, but they had been omitted by mistake. The Drafting Committee would be advised of that error in order to correct it.

26. It seemed that the Committee did not favour the idea of reintroducing the words “derived from or” into the text of paragraph 1(b). If there were no further comments on that point, he would take it that the Committee agreed to leave the approved text unchanged.

27. It was so agreed.

**Article 5**

28. The CHAIRMAN invited the Committee to consider article 5 and the amendments to it. The basic text before the Committee (E/CONF.82/3, pp. 59-63) demonstrated a flexible approach to the question of mutual legal assistance and contained several references to domestic law.

**Paragraph 1**

(E/CONF.82/C.1/L.13)

29. The CHAIRMAN drew attention to the amendment proposed by India (E/CONF.82/C.1/L.13).

30. Mr. OSHIKIRI (Japan) said that his delegation favoured the wording in the basic text.

31. Ms. VOLZ (United States of America) noted that paragraph 1 as proposed in the basic text referred to “a criminal offence established in accordance with article 2, paragraph 1”. On the understanding that article 5, paragraph 1, was to refer only to the paragraph which it mentioned, and not to article 2, paragraph 1 bis as well, her delegation approved the wording in the basic text.

32. The CHAIRMAN said that the wording proposed in the basic text mentioned “a criminal offence”. In other articles, in particular articles 3 and 4, the term “offence” had been used without the adjective “criminal”, which might perhaps be deleted from article 5, paragraph 1.

33. Mrs. KATHREIN (Austria) said that her delegation preferred the first paragraph of the Indian amendment (E/CONF.82/C.1/L.13) to the wording in the basic text. The language used in the basic text created problems for her delegation because of the absence of a safeguard clause. Nevertheless, it would accept paragraph 1 as worded in document E/CONF.82/3 provided it could solve that difficulty in connection with the succeeding paragraphs.

34. Mr. BAEYENS (France) urged that the wording of paragraph 1 should remain as it was in the basic text.
35. The Indian amendment (E/CONF.82/C.1/L.13) contained safeguard wording with regard to the constitutional, legal and administrative system of a Party. Yet paragraph 11(d) of the article provided that mutual legal assistance might be refused if it would be contrary "to the [Constitution, fundamental legal principles or] to the law of the requested Party". It would be quite superfluous to embody that idea in paragraph 1 if those words were approved for paragraph 11(d).

36. With regard to the Chairman's suggestion to delete the adjective "criminal" before the word "offence", he pointed out that the French version of article 2, paragraph 1, used the expression "infractions pénales". The adjective "pénal" was necessary and should appear in the text of article 3.

37. The CHAIRMAN said, that if there were no further comments, he would take it that the Committee approved article 5, paragraph 1, as proposed in document E/CONF.82/3, on the understanding that it would be left to the Drafting Committee to ensure consistency with regard to the term "criminal offence" in the various language versions.

38. It was so decided.

Paragraph 2 (E/CONF.82/C.1/L.13)

39. Mr. SCHUTTE (Netherlands) proposed that the paragraph should be deleted, since it was redundant; paragraphs 9 and 11 of article 5 and paragraph 1 of article 1 bis made sufficient reference to the principle of the supremacy of domestic law.

40. Mr. ENEGREN (Sweden), Mr. BAHEYENS (France), Mr. AFFENTRANGER (Switzerland) and Mr. FAIOLA (Italy) supported the Netherlands proposal.

41. Mrs. KATHREIN (Austria), supported by Mr. AL-ALSHEIKH (Saudi Arabia), said that she could agree to the deletion on condition that subparagraph 11(d) of article 5 was approved.

42. Mr. GUINAZU (Argentina) said that he would not oppose the deletion of the paragraph but, if it was retained, the terms "legal systems" and "administrative systems" should be deleted from it.

43. The CHAIRMAN said he took it that the Committee wished paragraph 2 to be deleted. He noted the reservations expressed by the representatives of Austria and Saudi Arabia on the subject of subparagraph 11(d). Unless he heard any objections, he would take it that the Committee deleted article 5, paragraph 2, subject to those reservations.

44. It was so decided.

45. The CHAIRMAN said that paragraph 2 of the Indian amendment (E/CONF.82/C.1/L.13) covered a different area from that of the paragraph 2 which the Committee had just deleted. He took it that the Committee did not wish the second paragraph of the Indian amendment to replace the deleted text.

46. It was so decided.

Paragraph 3 bis

47. Mr. ENEGREN (Sweden) said that the paragraph stated the obvious and should therefore be deleted.

48. Mr. CASAS (Spain) said that if paragraph 3 was taken to be an exhaustive list of mutual legal assistance measures, paragraph 3 bis would allow it to be extended; he therefore proposed that paragraph 3 bis should be retained.

49. Mr. SCHAAD (Federal Republic of Germany) said that if the measures provided for in paragraph 3 were optional, paragraph 3 bis would be redundant; if they were obligatory, paragraph 3 bis should remain.

50. Mr. CASAS (Spain) suggested that paragraph 3 bis might be incorporated in paragraph 3 as subparagraph 3(h).

51. The CHAIRMAN said that bilateral and multilateral agreements on mutual legal assistance frequently contained a specific catalogue of forms of assistance coupled with a provision, analogous to that in paragraph 3 bis, covering other eventualities. He suggested that the discussion of paragraph 3 bis should be deferred until paragraph 3 had been settled.

52. It was so decided.

Paragraph 3 (E/CONF.82/C.1/L.32)


54. Mr. SCHUTTE (Netherlands) said that his delegation's proposal was intended as a drafting amendment rather than one of substance; it sought to simplify the wording in the basic text without detracting from it. The introductory paragraph was intended as a compromise between the various options expressed in the basic text.

Introductory wording

55. Mr. SCHAAD (Federal Republic of Germany), Mr. GUNEY (Turkey), Mr. HUGLER (German Democratic Republic), Mr. BAHEYENS (France), Mr. SHING (Mauritius), Mr. FAIOLA (Italy), Mr. AFFENTRANGER (Switzerland), Mr. BRUCE (Ghana), Mr. LAVINA (Philippines), Mr. MULAT (Ethiopia), Mr. AL-ALSHEIKH (Saudi Arabia) and Mr. CASAS (Spain) supported the Netherlands proposal for the introductory wording.

56. Mrs. KATHREIN (Austria) said that she would like the introductory paragraph to be optional. Nevertheless, she preferred the Netherlands proposal to the wording in document E/CONF.82/3.

57. Mr. TEWARI (India) said that he would not oppose the wording in the Netherlands amendment.

58. The CHAIRMAN said he took it that the Committee approved the introductory wording to article 5, paragraph 3, proposed in document E/CONF.82/C.1/L.32.
59. It was so agreed.

Subparagraph (a)

60. Mr. SCHUTTE (Netherlands) said that the purpose of the Netherlands amendment (E/CONF.82/C.1/L.32) was to make explicit the difference between evidence on the one hand and statements under common law on the other: the word “statement” implied that an oath or promise was made. Making a false statement could give rise to an action for perjury.

61. Mrs. GOLAN (Israel) said that the notion of statements had no place in the Israeli legal system. She suggested that the word should be deleted.

62. Mr. SHING (Mauritius) expressed reservations concerning the subparagraph: his country had no procedure which involved statements, but evidence could be given under oath. Nor did its system provide for promises.

63. Mr. CASAS (Spain) said that the expressed aim of simplifying the wording of the paragraph had not been served by the addition of references purporting to cater for the common law system. He favoured the text in document E/CONF.82/3, but with the word “taking” replaced by the word “receiving”.

64. Mr. LAVINA (Philippines) agreed with the view expressed by the previous speaker in regard to allusions to the common law system. However, he could accept the Netherlands proposal if the phrase “whether or not under oath or promise” was deleted from it.

65. Mr. BAELYENS (France) asked whether the statements mentioned in subparagraph (a) were those taken from accused persons and whether the word “evidence” had deliberately been excluded from the Netherlands proposal. He also asked what scope the word “statement” was intended to have.

66. Mr. SCHUTTE (Netherlands) said that the purpose of the Netherlands amendment had been to make it clear that when a request for a statement was made by a common law State to a civil law State, an oath would be required from the person making it, which was not the normal practice in civil law States. Without such an oath, the statement would have no value under common law. He would have no objection to the wording in document E/CONF.82/3 if that distinction was made clear.

67. Mr. MADDEN (Jamaica) supported the wording in the basic text. He asked whether the word “evidence” was intended to mean testimony.

68. Mr. BAELYENS (France), supported by Mr. DURAY (Belgium), said that the wording in document E/CONF.82/3 should be approved, with the addition of the word “any” before the word “evidence”.

69. Mr. BERRADA (Morocco), Mr. GUÑAZU (Argentina), Mr. AL-ALSHIEKH (Saudi Arabia), Mr. MOAYEDODDIN (Islamic Republic of Iran), Mr. TEWARI (India) and Mr. MOLOKWU (Nigeria) expressed support for the wording in the basic text.

70. Mrs. OSHIKIRI (Japan) expressed a desire for the term “testimony” to replace the word “evidence”, since under the Japanese legal system the latter would include items seized from persons.

71. Mrs. GOLAN (Israel) said that she too would prefer the term “testimony” to the word “evidence”.

72. Mr. FAIOLA (Italy) supported the original wording since the phrase “evidence or statements” was broad enough to cover expertise.

73. Mr. WOLTRING (Australia) said that he too preferred the original text since, under common law systems, evidence had a restricted meaning, being confined to oral evidence by a witness.

74. Mr. SHING (Mauritius) expressed a preference for the term “evidence” and supported the original text.

75. Mr. BRUCE (Ghana) said that the word “evidence” was more in keeping with his country’s legal system.

76. The CHAIRMAN said that the French proposal to insert the word “any” was unnecessary with regard to the English version, which clearly implied taking any form of evidence or statement from persons. He took it that the Committee approved article 5, paragraph 3(a), as proposed in the basic text (E/CONF.82/3) and that the wording of the French version might be left to the Drafting Committee.

77. It was so agreed.

Subparagraph (b)

78. The CHAIRMAN said that in the absence of comments he assumed that the Committee approved the wording of article 5, paragraph 3(b), proposed in the basic text (E/CONF.82/3).

79. It was so agreed.

Subparagraph (c)

80. Mr. BOBIASZ (Canada) said that he preferred the wording proposed in the basic text, since the use of the term “premises” suggested by the Netherlands would make it difficult to carry out searches of vehicles, aircraft, vessels or land.

81. Mr. MEYER (United States of America), Mr. MOAYEDODDIN (Islamic Republic of Iran), Mr. BRUCE (Ghana), Mr. FAIOLA (Italy), Mr. LAVINA (Philippines), Mr. GUÑAZU (Argentina) and Mr. AGUILA SABEL (Peru) associated themselves with the remarks made by the representative of Canada.

82. Mr. BAELYENS (France) expressed a preference for the Netherlands amendment to paragraph 3(c), but suggested that the wording should be brought more closely into line with standard judicial procedures. It
should therefore read: "executing searches and effecting seizures with a view to obtaining items of evidence".

83. Mr. SCHUTTE (Netherlands) said that, since one of the reasons for his amendment to paragraph 3(c) was to eliminate the words "executing requests", he endorsed the French proposal.

84. Mr. OSHIKIRI (Japan) said that, like the representatives of France and the Netherlands, he had difficulties with the expression "executing requests", which did not follow on from the introductory words to paragraph 3.

85. Mr. AFFENTRANGER (Switzerland) associated himself with the comments made by the representatives of France and the Netherlands.

86. Mr. CAIJA KAUFFMANN (Bolivia) said that he was in favour of the original text, to which the words "of items of evidence" should be added.

87. The CHAIRMAN said that, in the light of the comments made by several representatives, subparagraph (c) might be amended to read "executing searches and seizures".

88. Mr. SCHUTTE (Netherlands) agreed to the change in the French version.

89. Mr. LANVA (Philippines) supported the Chairman's proposal.

90. The Chairman's proposal was approved.

Subparagraph (d)

91. The Chairman's proposal was approved.

92. Mr. AGUILA SABEL (Peru), Mr. BAHEYENS (France) and Mr. BOUCETTA (Morocco) suggested the deletion of subparagraph (d).

93. Mr. GUINAZU (Argentina) agreed to the deletion of subparagraph (d), but thought that the meaning of the term "objects" should be defined if the subparagraph was retained.

94. Mrs. GOLAN (Israel) said that the term "objects" was not qualified in the Netherlands proposal (E/CONF.82/C.1/L.32), and was therefore too broad. She preferred the wording in the basic text.

95. Mr. MULAT (Ethiopia), Mr. LAVINA (Philippines), Mr. CASAS (Spain), Mr. ARENA (United States of America) and Mr. FAIOLA (Italy) expressed their support for the Netherlands amendment.

96. Mr. AFFENTRANGER (Switzerland), supported by Mr. GAUTIER (France), said that he could accept the Netherlands proposal if the French version was amended to read "examinen des objets et visiter des lieux".

97. Mr. SCHUTTE (Netherlands) agreed to the change in the French version.

98. The CHAIRMAN invited the Committee to approve the Netherlands amendment to subparagraph (d) (E/CONF.82/C.1/L.32) with the change proposed by Switzerland to the French version.

99. It was so decided.

Subparagraph (e)

100. Mr. ARENA (United States of America) expressed his support for the Netherlands amendment (E/CONF.82/C.1/L.32).

101. Mr. MADDEN (Jamaica) considered that some clarification of the term "objects" was required. In some instances the objects referred to might be private property and the rights of the owner should be protected.

102. Mr. GAUTIER (France) agreed. The term "objects" was imprecise and had no strict legal meaning. He therefore suggested that the subparagraph might read: "providing items of information and exhibits."

103. Mr. OSHIKIRI (Japan) said that he too had difficulties with the word "objects", which was far too broad. In his view, some reference should be made to evidence.

104. Mr. AL-ALSHEIKH (Saudi Arabia) agreed with the previous speakers and suggested that the word "objects" might be replaced by "evidentiary articles" or "items of evidence".

105. Mr. SCHUTAD (Federal Republic of Germany) agreed that the word "objects" was not sufficiently precise. He expressed a preference for the term "evidentiary items".

106. Mr. YU Jingming (China) supported the wording proposed by the Netherlands and suggested that the words "for evidentiary purposes" should be added to it.

107. The CHAIRMAN invited the Committee to approve the following wording for subparagraph (e): "Providing information and evidentiary items."

108. It was so decided.

The meeting rose at 1.05 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)


1. The CHAIRMAN drew attention to document E/CONF.82/C.1/L.38, which contained the proposals made by the United States at the previous meeting (E/CONF.82/C.1/SR.28, paras. 5-9).

2. Mr. MEYER (United States of America) said that, as a result of consultations with other delegations on the text of his proposals, he had introduced some changes which he hoped would make a consensus on article 1 bis more likely. The revised text was before the Committee in document E/CONF.82/C.1/L.38. The Committee would note that, in the first sentence of paragraph 1, the words “to assist States Parties to address more effectively” now read “to promote co-operation among States Parties so that they may address more effectively”. In paragraph 3, the words “the independent exercise and performance of functions which are reserved for the authorities” had been amended to read “the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities”.

3. The CHAIRMAN reminded the Committee that the second sentence of paragraph 1 of the United States proposal in document E/CONF.82/C.1/L.38 was virtually identical with the wording proposed by the United Kingdom (E/CONF.82/C.1/L.31), in relation to which an amendment had been proposed by the representative of Bulgaria (E/CONF.82/C.1/SR.28, para. 2).

4. Mr. SZEKELY (Mexico) said that he saw no substantial difference between the 42-nation proposal (E/CONF.82/C.1/L.1/Rev.2 and Add.1) and the text in document E/CONF.82/C.1/L.38. In the interests of avoiding a lengthy discussion that might prejudice the outcome of the Conference, his delegation would accept the United States proposal if the other sponsors of the proposal in document E/CONF.82/C.1/L.1/Rev.2 and Add.1 did so as well. The United States proposal presented a set of ideas that were useful for the convention.

5. Mr. LEE (Canada) said that his delegation and that of Mexico had held informal consultations with the other sponsors of the 42-nation proposal. There now appeared to be no objection among them to the United States proposal, the revised form of which reflected consultation with some of the key delegations concerned.

6. It had been agreed with the United States delegation that the amended article should remain as article 1 bis at the beginning of the convention and not be placed towards the end.

7. Mr. HAY (United Kingdom) said that his delegation and those of the various other European countries which supported the proposal in document E/CONF.82/C.1/L.31, had considered the text put forward in document E/CONF.82/C.1/L.38. They noted the basis on which it had been placed before the Committee and, in view of the acceptance which it commanded, they did not wish to place any obstacle in the way of its incorporation into the convention.

8. He was grateful for the constructive suggestion made by the representative of Bulgaria with regard to the text proposed in document E/CONF.82/C.1/L.31, but in view of the support which the United States proposal now enjoyed, he would prefer not to consider the Bulgarian suggestion further.

9. Mr. ERSAVCI (Turkey) said that he supported the text in document E/CONF.82/C.1/L.38.

10. Mr. GARCIA ORDOÑEZ (Colombia) said that if the United States proposal commanded a consensus his delegation would approve it.

11. Mr. ALLAM (Egypt) said that his delegation supported the proposal in document E/CONF.82/C.1/L.38.

12. Mr. AL-ALSHEIKH (Saudi Arabia) said that, in view of the emergence of a consensus, his delegation would not object to the United States proposal. However, he suggested that the words “the drug abuse problem” in the first sentence of paragraph 1 should read “the illicit traffic in narcotic drugs and psychotropic substances”, and thus reflect the title of the convention.

13. Mr. VALL (Mauritania) supported the United States proposal as amended by Saudi Arabia.

14. Mr. BRUCE (Ghana) and Mr. MULAT (Ethiopia) supported the United States proposal.

15. Mr. LAVIÑÁ (Philippines) supported the United States proposal as amended by Saudi Arabia.

16. Mr. FOFANA (Senegal) supported the United States proposal.

17. Mr. GONZALEZ LOPEZ (Cuba) said that, although his delegation had never considered article 1 bis
absolutely necessary, he had no objection to the compromise text.

18. Mr. HAY (United Kingdom) said that his delegation and those of the various other European countries which supported the proposal in document E/CONF.82/C.1/L.31 were satisfied with the language of the proposal in document E/CONF.82/C.1/L.38. The change proposed by Saudi Arabia seemed acceptable.

19. The CHAIRMAN said that very substantial support clearly existed for the text of article 1 bis proposed in document E/CONF.82/C.1/L.38. He suggested that the Committee might approve that wording, as amended by the representative of Saudi Arabia, for inclusion in the text of the convention as article 1 bis.

20. It was so agreed.

21. Mr. LAVIÑA (Philippines) said that he wished to propose the addition of a fourth paragraph to the text of article 1 bis which had just been approved. It reflected the fact that the draft convention, in article 20, contemplated the status of certain international organizations in relation to the provisions of the convention. His suggested text read as follows:

"4. Nothing in this Convention shall preclude the exercise by any international economic organization of the rights and obligations conferred upon it by its charter to carry out the provisions of this Convention for and on behalf of its member States which are Parties to this Convention."

22. Mr. HAY (United Kingdom) said that it was difficult to understand the purport of the proposal made by the representative of the Philippines, which appeared to fall outside the scope of article 1 bis. In view of the effort already expended in obtaining agreement to the text of that article, he urged the representative of the Philippines to leave the merits of his proposal to be discussed in another forum.

23. The CHAIRMAN said that the Philippines proposal related to draft article 20, and not to article 1 bis, which had been approved. If Committee II approved a text on the lines suggested by the representative of the Philippines, it would be inserted in the appropriate place in the draft convention.

Article 5 (continued)

Paragraph 3 (continued) (E/CONF.82/C.1/L.32)

Subparagraph (f)

24. Mr. MOAYEDODDIN (Islamic Republic of Iran) suggested that the word "relevant" should appear before the words "documents and records" proposed by the Netherlands in document E/CONF.82/C.1/L.32, as in the formulation of subparagraph (f) in document E/CONF.82/3.

25. Mrs. KATHREIN (Austria) said that her country would have difficulty in providing the mutual assistance measures specified in subparagraphs (f) and (g) for the purpose of a police investigation unless criminal proceedings had been instituted against a suspected offender. The measures proposed would only be acceptable if the wording in paragraph 9, "A request shall be executed in accordance with the domestic law . . . of the requested Party", was included in the draft.

26. Mr. MADDEN (Jamaica), Mr. AL-AL-SHEIKH (Saudi Arabia), Mrs. GOLAN (Israel) and Mr. SHING (Mauritius) said that they shared the views expressed by the Austrian representative.

27. The CHAIRMAN suggested that the Committee might approve the wording of article 5, paragraph 3(f), proposed in document E/CONF.82/C.1/L.32, with the addition of the word "relevant" before the words "documents and records", and subject to the reservation expressed by the delegations of Austria, Israel, Jamaica, Mauritius and Saudi Arabia.

28. It was so agreed.

Subparagraph (g)

29. Mr. MEYER (United States of America) supported the Netherlands proposal in document E/CONF.82/C.1/L.32. He suggested, however, that the words "or tracing" should be added after the word "identifying", as in the text in document E/CONF.82/3. The reference to the notion of tracing would be useful for evidentiary purposes in cases where proceeds from drug trafficking were transmitted from one country to another by electronic means.

30. Mrs. KATHREIN (Austria), supported by Mr. MADDEN (Jamaica), Mrs. GOLAN (Israel) and Mr. SHING (Mauritius), said that the reservation she had expressed with regard to subparagraph (f) applied to subparagraph (g) as well.

31. The CHAIRMAN invited the Committee to approve the text of article 5, paragraph 3(g), proposed in document E/CONF.82/C.1/L.32, with the addition of the words "or tracing" after the words "identifying" and subject to the reservation expressed by the delegations of Austria, Israel, Jamaica and Mauritius.

32. It was so agreed.

Paragraph 3 bis (continued)

33. Mr. WILKITZKI (Federal Republic of Germany) said that the wording of paragraph 3 bis proposed in the basic text was rendered unnecessary by the introductory wording which the Committee had approved for article 5, paragraph 3. However, if it was included in the draft, it should be expressed in non-mandatory language, using the word "may" as proposed in the basic text. Legal assistance given under the domestic law of the requested Party should not be rendered obligatory.

34. Mr. CASAS (Spain) and Mr. AL-AL-SHEIKH (Saudi Arabia) said that they shared the views just expressed.
35. Mr. AFFENTRANGER (Switzerland) said that paragraph 3 bis should make it quite clear that the list of forms of mutual legal assistance specified in paragraph 3 was not exhaustive.

36. Mr. SCHUTTE (Netherlands) expressed his satisfaction with the wording of paragraph 3 bis proposed in the basic text.

37. The CHAIRMAN said that paragraph 3 bis merely provided for the possibility of optional measures of assistance additional to those specified in paragraph 3. Unless he heard any objection, he would take it that the Committee approved the text of article 5, paragraph 3 bis proposed in document E/CONF.82/3.

38. It was so agreed.

Paragraph 3 ter

39. Mr. SCHUTTE (Netherlands) said he had initially believed that the draft should draw a distinction between persons in custody and persons at liberty according to whether their assistance in investigations or their participation in proceedings was concerned. Now, however, he felt that the verb "consent" was suitable in both respects, and he therefore suggested that the words "[are prepared]" should be deleted. The term "national law" should be altered to read "domestic law", which was the term used elsewhere in the draft convention.

40. Mrs. PONROY (France) said that her delegation would accept paragraph 3 ter provided that it included wording concerning the immunity of witnesses or persons in custody, on the lines indicated in the first additional paragraph for article 5 proposed in document E/CONF.82/3 (p. 62).

41. The CHAIRMAN said that the point raised by the French representative would best be dealt with when the proposed additional paragraphs were discussed. Unless he heard any objection, he would take it that in article 5, paragraph 3 ter, as proposed in document E/CONF.82/3 the Committee decided to delete the square brackets enclosing the word "consent", to delete the words "[are prepared]", and to substitute the term "domestic law" for the term "national law"; and that it approved the paragraph in that form.

42. It was so agreed.

Paragraph 3 quater (E/CONF.82/C.1/L.33)

43. Mr. BOBIASZ (Canada) said that the new paragraph 3 quater proposed in document E/CONF.82/C.1/L.33 was designed to complement the provision in article 3, paragraph 3. In discussing that article, the Committee had recognized that it was appropriate, for the purpose of the confiscation measures contemplated in the convention, to have access to bank records in order to investigate drug trafficking offences.

44. Mrs. KATHERIN (Austria) said that the proposed new paragraph might not be necessary, since provision for mutual legal assistance in regard to bank, financial, corporate and business records was made in subparagraph (f) of article 5, paragraph 3, and was implied in subparagraph (g) of that paragraph; also, an overall obligation in regard to such matters was implicit in article 5, paragraph 1.

45. Mr. BOBIASZ (Canada) explained that in some countries it was difficult to obtain access to bank or financial records owing to the requirements of bank secrecy. The inclusion in the convention of an obligation to grant such access would alleviate that difficulty.

46. Mr. SHING (Mauritius) agreed with the Austrian representative that the substance of the proposed new paragraph 3 quater was already expressed in subparagraphs (f) and (g) of article 5, paragraph 3. He reserved his position on the merits of the proposal until the Committee had discussed article 5, paragraph 9.

47. Mr. WILKITZKI (Federal Republic of Germany) expressed some hesitation regarding the proposed new paragraph. The principle that Parties had a duty to give access to materials such as bank records was already clear from article 5, paragraphs 1 and 3. Since, however, the manner in which a requested State should fulfil that duty was not spelt out, the inclusion of a reference to courts and competent authorities as proposed in document E/CONF.82/C.1/L.33 could therefore cause difficulty. The second sentence was open to the objection that bank secrecy enjoyed very high priority in some countries; if it was decided that the convention should require Parties to lift it, the wording needed to express that would have to be drafted very carefully. It would be best to discuss paragraph 3 quater in connection with paragraphs 9 and 11.

48. Ms. VOLZ (United States of America) said that experience had pointed to the importance of being able to penetrate bank secrecy when seeking to prosecute drug traffickers. Her delegation felt it was necessary for article 5 to include a strong affirmation, similar to that in article 3, that bank secrecy would not form any barrier to prosecution for drug trafficking.

49. Mr. SEARS (Bahamas) agreed with the views expressed by the representatives of Austria and the Federal Republic of Germany.

50. Mr. MBOKWERE (Nigeria) said he was convinced of the need for the draft to make it clear that bank secrecy would not be a sufficient ground for a refusal to render assistance. Access to bank records could be a very significant aid in prosecuting criminals, and the knowledge that the illicit proceeds of drug trafficking could be confiscated by that means would act as a major deterrent to it.

51. Mr. OSHIKIRI (Japan) referred to the view expressed by the Austrian representative that the new paragraph would merely replicate the provision in article 5, paragraph 3(f). Countries which had no objection to meeting a request for assistance under paragraph 3(f) should have no difficulty in complying with the proposed
new provision. He did not agree that it was redundant; the
introductory wording to paragraph 3 focused on the pur-
pose of requests for mutual legal assistance, whereas the
proposed new paragraph focused on one of the means
whereby such requests might be met. It was based on the
fact that in some countries bank secrecy was protected
under domestic law. Without the paragraph, a conflict
might arise between the application of article 3 and that
of article 5, especially with regard to paragraphs 9 and 11
of the latter article. If a Party relied on those paragraphs
to refuse to execute a request from another Party on the
ground that the material requested could not be made
available under domestic law, the purpose of article 5
would to some extent be defeated.

52. Ms. HUSSEIN (Malaysia) said that in principle she
supported the amendment in document E/CONF.82/C.1/
L.33, but would like the new paragraph to be couched in
more general terms.

53. Mr. SCHUTTE (Netherlands) said that he shared
the views expressed by the Japanese representative. He
could not understand how delegations which had approved
article 3, paragraph 5, could object to the proposed new
paragraph.

54. Mr. MADDEN (Jamaica) said that the matter must
be considered in relation to article 5, paragraph 9.

55. Mr. CAJIAS KAUFFMANN (Bolivia) said that one
of the features of the new convention was that it attempted
to regulate the identification and confiscation of proceeds
derived from drug trafficking offences. It was difficult to
trace the vast amounts of money being moved around the
world by drug criminals; experience showed that banks
maintained secrecy about customers’ accounts. For that
reason, he supported the new paragraph 5 quater proposed
by Canada and the United States.

56. Mrs. GOLAN (Israel) said that she agreed in prin-
ciple with the joint proposal. However, the paragraph
should be considered in connection with paragraph 9.
Under Israeli domestic law the Attorney-General had the
right to refuse a request of the kind contemplated, so that
she would prefer the provision to be discretionary.

57. Mrs. KATHREIN (Austria) said that article 3, para-
graph 3, provided for the same action as the proposed
article 5, paragraph 3 quater. Furthermore, article 3, para-
graph 4(e) dealt with the matter in terms of domestic law
and any bilateral or multilateral treaty, agreement or
arrangement. Perhaps all that was needed was the second
sentence of the proposed new paragraph.

58. Mr. SHING (Mauritius) suggested that the text
proposed by Canada and the United States should be
amended to read: “In order to carry out the measures
referred to in this article, a Party shall not decline to
render assistance under this article on the grounds of bank
secrecy.”

59. Mrs. PONROY (France) said that she agreed with
that suggestion. The wording proposed by Mauritius might
perhaps be improved by the the insertion of the word
“legal” before the word “assistance”.

60. Mr. PAREJO GONZALEZ (Colombia) said that he
welcomed the amendment submitted by Canada and the
United States, which concerned an important matter. In
such a case there could be no harm in reiterating a prin-
ciple laid down elsewhere in the convention.

61. Mr. SMITH (Barbados) said that his delegation had
some difficulty in accepting the text proposed for para-
graph 3 quater because it imposed an obligation on Parties
to introduce specific legislation without reference to their
constitutional situation.

62. Mr. AFFENTRANGER (Switzerland) said that his
delegation had no problems whatsoever in accepting the
proposed text. His country co-operated fully under mutual
legal assistance arrangements and did not decline assis-
tance on the grounds of bank secrecy.

63. The CHAIRMAN proposed that interested delega-
tions should meet with a view to formulating a text for
article 5, paragraph 3 quater which took account of the
links between the proposed new paragraph and other
provisions of the convention.

64. It was so decided.

Paragraph 4 (E/CONF.82/C.1/L.36)

65. Mr. WOLTRING (Australia), introducing his dele-
gation’s amendment in document E/CONF.82/C.1/L.36,
said that it combined the paragraphs 4 and 5 proposed in
the basic text and was designed to indicate the relationship
between the assistance which might be given under the
convention and the assistance to be given under other
conventions or agreements. Furthermore, it was intended to
preclude any attempt to use the convention to limit the
degree of assistance rendered. Paragraph 4(a) of his dele-
gation’s proposal made it clear that assistance might be
provided pursuant to other bilateral or multilateral treaties,
agreements, arrangements or practices. The intention was
to preserve the operation of assistance provisions under
arrangements other than the new convention.

66. Paragraph 4(b) stipulated that if a bilateral or multi-
lateral treaty provided for a lesser degree of assistance
than the convention, the latter should determine the assis-
tance to be given. The intention of the convention was
that it should broaden assistance, not narrow it. Unlike
extradition, mutual legal assistance was a new field in
the administration of criminal justice. He would have
no objection to the word “derogates” replacing the word
“detracts” in paragraph 4(b) of his delegation’s amend-
ment.

67. Mr. WILKITZKI (Federal Republic of Germany)
supported the Australian amendment.

68. Mrs. PONROY (France) said that in the area of
mutual legal assistance the convention should con-
form with what was contained in other treaties governing
assistance in criminal matters. She therefore favoured the first sentence of paragraph 4 as proposed in the basic text. She could not accept paragraph 4(b) since it implied that the convention might supersede existing mutual legal assistance treaties. Perhaps the draft should contain a provision along the lines of article 26 of the European Convention on Mutual Assistance in Criminal Matters.

69. Mr. TEWARI (India) said that his delegation supported the Australian amendment but would like to see the first sentence of the original paragraph 4 retained.

70. Mrs. KATHREIN (Austria) welcomed the amendment submitted by Australia as proposed in document E/CONF.82/C.1/L.36.

71. Mr. GUINAZU (Argentina) commended the Australian amendment. He was impressed by the manner in which it referred to the types of mutual legal assistance already listed in paragraph 3; moreover, it encouraged the conclusion of bilateral treaties, which were essential to efficient co-operation, and it confirmed the fundamental principles laid down in article 5 without prejudicing other arrangements.

72. Mr. SCHUTTE (Netherlands) said that the two sentences of paragraph 4 as proposed in the basic text appeared to represent two different approaches to the same issue. The first sentence dealt with obligations under specific mutual legal assistance treaties. The inference to be drawn from it, in his view, was that where such obligations went further than those envisaged in the draft convention, they would not be affected by the latter; and conversely, where they did not go as far as the provisions of the convention, the latter should be regarded as the basis for obligations to render legal assistance in criminal matters.

73. The second, bracketed, sentence on the other hand, which was reproduced without change in paragraph 4(a) of the Australian amendment, seemed not to be concerned with the usual treaties of mutual legal assistance in criminal matters, but to contemplate treaties relating to such things as customs, fiscal or police matters or securities and exchange commission arrangements—treaties which might have a mutual legal assistance component but were not specifically directed towards such assistance.

74. Paragraph 5 as proposed in the basic text seemed basically procedural and concerned with communication between Parties. It did, however, reflect an element of grounds for refusal, which the Committee might wish to address as a separate issue. His delegation read it as implying that, irrespective of the question whether the provisions of an existing specific mutual legal assistance treaty were broader or narrower in scope than those of the draft convention, a Party might still apply the procedural arrangements laid down in that treaty instead of those envisaged from paragraph 6 onwards in article 5 of the draft convention.

75. That being said, he would not object to the text proposed by Australia in paragraph 4(b) of its amendment, provided that the words "where a treaty" were amended to read "where a specific treaty"; and that the words "between the Parties in question" were inserted between commas after the word "multilateral".

76. Returning to paragraph 4(a) of the Australian proposal, he reminded the Committee of his comment that it seemed to contemplate treaties, agreements and so on which had only an ancillary bearing on assistance in criminal matters. If that was so, it might be appropriate to make it clear that the paragraph also envisaged the substantive obligations proceeding from existing specific arrangements.

77. Mr. CASAS (Spain) pointed out that paragraphs 4 and 5 as proposed in document E/CONF.82/3 were similar to provisions in instruments such as the European Convention on Mutual Assistance in Criminal Matters and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. That showed that the substance of those paragraphs was hardly innovatory. He believed that the Committee should approve at least the initial sentences of paragraphs 4 and 5 as proposed in document E/CONF.82/3 and then concentrate its attention on the more controversial sections of those paragraphs, which were in square brackets.

78. The CHAIRMAN said that, so far as paragraph 4 was concerned, the Committee might wish, in the light of the comments made on the Australian proposal, to approve both those sentences. He pointed out that paragraph 3 bis contemplated "other forms of mutual legal assistance"; those might be furnished under treaties, agreements, arrangements or practices that were not specifically designed for that purpose.

79. Mrs. PONROY (France) said that article 5 dealt essentially with mutual legal assistance; it might therefore be wise to confine it to that notion and make it cater only for those agreements and arrangements which were unequivocally of that kind, leaving those not specifically concerned with mutual legal assistance for consideration under article 6. It seemed to her self-evident that provisions for mutual legal assistance would in no way detract from treaties of assistance in other domains, such as those alluded to by the representative of the Netherlands. However, to state so in the text might give rise to some ambiguity. She believed it would be sufficient if the Committee's understanding of that point was expressed clearly in the summary record. Accordingly, she favoured the inclusion in the draft convention of the first sentence only of paragraph 4.

80. Mr. TEWARI (India) believed that, in the first sentence of paragraph 4, the qualification of the reference to mutual legal assistance by the words "in criminal matters" might unduly limit the scope of the article. Mutual assistance was needed by States—and provided under treaty or by agreement—in a number of other domains. Moreover, drug offences were closely related to activities such as terrorism, arms smuggling or economic and commercial fraud. Since international instruments such as the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences adopted a somewhat
broader approach to the matter, he proposed that the concluding portion of the first sentence of paragraph 4 as proposed in document E/CONF.82/3 should be amended to read "mutual legal assistance in criminal and other related matters". With that addition, he could accept the sentence. He could also agree to the inclusion in the draft of the second, bracketed, sentence in paragraph 4.

81. The CHAIRMAN pointed out that the question of the relationship between assistance in criminal matters and assistance in other related fields had been considered at great length in the meetings of the open-ended intergovernmental expert group and the Review Group. The product of their deliberations was reflected in the delicately balanced text before the Committee, which it might be dangerous to call in question.

82. Mr. WILKITZKI (Federal Republic of Germany) said he believed that the possibility of merging the provisions of the original paragraphs 4 and 5, as proposed in the Australian amendment, was remote. His own delegation had discerned a certain lack of balance between paragraphs 4 and 5, but thought that might be remedied by other means.

83. The first sentence of paragraph 4 concerned treaty obligations, whereas the first sentence of paragraph 5 appeared to relate to procedural requirements, although it reflected substantive issues as well, and in particular the question of grounds for refusal. Those issues would have to be resolved. His own view was that the contents of paragraph 4 should be limited to the matter of obligations and those of paragraph 5 to procedural requirements. He therefore favoured the inclusion of the first sentence of paragraph 4, on the understanding that it was the only provision in the draft convention to cover the relationship between obligations under more than one treaty. The bracketed sentence appeared to be of an ancillary nature and might be deleted.

84. The CHAIRMAN said he took it that there was a consensus in favour of approving the first sentence of paragraph 4 as proposed in document E/CONF.82/3.

85. It was so agreed.

86. The CHAIRMAN called for further views concerning the second, bracketed, sentence of paragraph 4.

87. Mr. FAIOLA (Italy) favoured the deletion of that sentence.

88. Mr. HENA (Bangladesh) said that the wording of the second sentence of paragraph 4, which had been taken up in the Australian proposal, almost gave the impression that the part of the draft convention under consideration was to serve as a support for other, existing, instruments, the implication being that they would otherwise be ineffective. He understood, of course, that the real intention of the sentence was to ensure that existing instruments would not be affected by the new convention, the provisions of which were not to detract from earlier obligations. On that understanding, he proposed that the sentence should be amended to read: "The Parties, including their competent authorities, may provide for mutual legal assistance pursuant to this article, without affecting their obligations under other bilateral or multilateral treaties, agreements, arrangements or practices".

89. Mr. ARENA (United States of America) favoured the inclusion of the second sentence of paragraph 4. In the view of his delegation, the difficulty underlying it was that certain activities, some of which were among those listed in article 5, paragraph 3, were considered to constitute mutual legal assistance under some systems and not under others. There seemed, however, to be general recognition in the Committee that whatever could be achieved simply should be so achieved. It was important that the contents of paragraph 5 should not be regarded as exclusive or "first-resort" provisions when various Parties were capable, through agreements reached bilaterally or multilaterally, or under their domestic law, to obtain more expeditiously the results which that paragraph contemplated.

90. Mr. AFFENTRANGER (Switzerland) stated that legislation very recently enacted in his country formed the basis for co-operation between it and States with which Switzerland did not have treaties. That legislation was more far-reaching than the provisions envisaged on the matter in the draft convention. What was a fact for his country could be a possibility for others. With that in mind, he proposed that the last part of the second sentence of paragraph 4 should read "treaties, agreements, arrangements, practices or domestic law". He recommended its inclusion in the draft in that form.

91. Mr. LAVIÑA (Philippines) said that, mainly for the reasons given by the representative of the United States, he too favoured the inclusion of the second sentence of paragraph 4.

92. Mr. BROOME (Australia) said that the purpose of the attempted restructuring of paragraphs 4 and 5 had been to ensure that nations would remain free to establish treaties, agreements, arrangements or practices that went further than the standards to be laid down in the present convention and ensured even greater mutual assistance than what it envisaged. His delegation had based its proposal on the fear that courts might hold that the convention constituted a barrier to such arrangements, and thus impede effective law enforcement. In the light of the comments made by other speakers, he suggested accommodating that point, by including in the draft the second sentence of paragraph 4 as proposed in document E/CONF.82/3, and amending it to read: "This Convention is not intended to prevent the Parties, including their competent authorities, from providing for assistance, including those types described in paragraph 3, pursuant to other treaties, agreements, arrangements or practices".

The meeting rose at 6 p.m.
30th meeting

Wednesday, 14 December 1988, at 10.15 a.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 5 (continued)

Paragraph 4 (continued)

1. The CHAIRMAN reminded the Committee that it had already approved the first sentence of paragraph 4 of the basic text.

2. Mr. SCHUTTE (Netherlands) said that, after consulting other delegations, he had a proposal to make in relation to paragraphs 4, 5 and 13, which he believed might simplify the Committee’s task. First, he suggested the deletion of the second sentence of paragraph 4, with the consequent addition to paragraph 13 of the words “or arrangements” after the phrase “bilateral or regional agreements” and of the words “or enhance” after the phrase “give practical effect to”. The existing paragraph 13, under his proposal, would be the final paragraph of article 5. Second, he suggested that paragraph 5 should 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”.

3. Mr. CASAS (Spain), Mr. SHING (Mauritius), Mr. OUCHARIF (Morocco) and Mr. LAVIÑA (Philippines) supported the Netherlands proposal with regard to paragraphs 4 and 13.

4. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved article 5, paragraph 4, with the second sentence deleted, as proposed by the representative of the Netherlands.

5. It was so decided.

Paragraph 13

6. The CHAIRMAN suggested that the Committee should proceed to approve the wording of paragraph 13, leaving its position in the article to be decided at a later stage.

7. It was so agreed.

8. Mr. MADDEN (Jamaica) pointed out that arrangements under paragraph 13 might be international in character, and not only bilateral or regional. He therefore suggested that the text should read: “. . . arrangements or bilateral or regional agreements . . .”.

9. Mr. SCHUTTE (Netherlands) suggested that the problem could be solved by replacing the word “bilateral” by “multilateral” in the amendment he had proposed.

10. The CHAIRMAN suggested that the Committee might wish to approve the following wording for paragraph 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.”

11. It was so decided.

Paragraph 5

12. Mr. LAVIÑA (Philippines) requested that the amendment to paragraph 5 proposed by the Netherlands should be circulated in writing.

13. The CHAIRMAN suggested that, pending circulation of the text of the Netherlands amendment, the Committee should consider paragraph 6.

14. It was so agreed.

Paragraph 6 (E/CONF.82/C.1/L.32 and L.34)

15. Mr. NOMOTO (Japan) suggested that the square brackets enclosing the words “or authorities” in the first sentence and the words “or the authorities” in the second sentence of paragraph 6 should be deleted. In his country, several competent authorities existed at the national level and if only one were designated efficient co-operation would be impeded.

16. Mr. SCHUTTE (Netherlands) said that his delegation’s amendment to paragraph 6 (E/CONF.82/C.1/L.32) was based on the principle that a single authority should be designated, although some specific situations might call for exceptions to that rule. Such was the case foreseen in article 24 of the draft final clauses in document E/CONF.82/C.2/L.16. Committee II, however, had agreed to the elimination of article 24. Consequently, his delegation withdrew its amendment to article 5, paragraph 6, on the understanding that in cases where a Party was responsible for the international relations of more than one territory, it might designate an authority for every such territory to which the convention applied.

17. Mr. YU Jingming (China), introducing his delegation’s amendment to paragraph 6, (E/CONF.82/C.1/L.34),
said that it consisted in adding the words "and in urgent circumstances, through ICPO/Interpol channels, if possible" to the end of paragraph 6. He drew attention to the increasingly important role played by ICPO/Interpol in the struggle against international drug trafficking. Experience had shown that the ICPO/Interpol communications system and archives were extremely effective as a means of international co-operation and should be still further developed. He also drew attention to resolution III of the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, which specifically referred to ICPO/Interpol. The words "if possible" had been included in his delegation's amendment to provide for the case of countries which were not members of ICPO/Interpol.

18. Mr. OUCHARIF (Morocco) said that he saw no need to refer to more than one authority in the paragraph. With regard to the Chinese amendment, which he did not oppose in principle, he observed that a problem might arise in practice, since urgent communications sent through ICPO/Interpol channels did not provide the full text of the request or communication concerned, but only a reference to it. Parties using the ICPO/Interpol channel should not forgo the diplomatic channel. If the Chinese amendment were adopted, it should be made clear that the diplomatic channel might also be used.

19. Mr. ARENA (United States of America), referring to the point raised by the representative of Japan, said that his country too had several agencies with responsibility for different aspects of law enforcement. It was for that reason, on the basis of past experience, that he considered it essential for each country to designate a central contact point to receive requests and communications, which it would then channel to the appropriate national agency. For similar reasons he agreed that ICPO/Interpol had a role to play, but use of its channels should not be an obligation. He would prefer a permissive wording along the following lines: "If the central authorities so agree, communications may be made through ICPO/Interpol channels.”

20. In his view, the last phrase of paragraph 6, starting with the words "this requirement shall be ..." should be deleted. What was most vital was direct communication between law enforcement agencies, which were more sensitive than diplomatic circles to the need for haste.

21. Mr. MULAT (Ethiopia) favoured a reference to authorities also in the plural. He supported the Chinese amendment (E/CONF.82/C.1/L.34).

22. Mr. LAVIÑA (Philippines) accepted that individual countries might need to designate more than one authority. He opposed the deletion of the last phrase "this requirement shall be ..." in paragraph 6, but he supported the Chinese amendment.

23. Mr. NOMOTO (Japan) also opposed the deletion of the final phrase in paragraph 6. He pointed out that a reference to ICPO/Interpol might present legal difficulties for his country.

24. Mrs. JONES (United Kingdom) said that she would prefer a reference in paragraph 6 to a single authority. She supported the Chinese amendment and believed that the United States delegation's difficulties might be overcome by modifying the final phrase of the Chinese amendment to read as follows: "and without prejudice to the fact that, in urgent circumstances, it might be passed through ICPO/Interpol channels, if possible”.

25. Mr. MADDEN (Jamaica) also preferred a reference to a single authority. A reference to the diplomatic channel only, as in the present text, was perhaps preferable, since Parties would decide on the most suitable channel of communication by mutual agreement. The reference to communication through Interpol facilities might perhaps be better included in article 5, paragraph 7.

26. Mr. AL-SHARARDA (Jordan) said that his delegation could agree to either the retention or the deletion of the words in square brackets in the first sentence. With regard to the Chinese amendment, his experience had been that Interpol was an effective organization and played a useful role in all activities directed against drug traffickers.

27. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that he opposed the deletion of the final phrase in paragraph 6, which was the outcome of a long discussion in the Review Group. He endorsed the United Kingdom representative's proposal for modification of the Chinese amendment.

28. Mr. GONZALEZ FELIX (Mexico) also supported the United Kingdom proposal.

29. Mr. BROOME (Australia) said that he preferred a reference to a single authority, although he recognized that there were genuine and legitimate reasons for the other option. It was necessary, in his view, to refer in paragraph 6 to the diplomatic channel. He proposed, as an alternative wording for the final phrase in the amendment submitted by China, the formula: “and, where the Parties agree, through ICPO/Interpol channels, if possible”.

30. Mr. SASTROHANDOYO (Indonesia) said that his country’s experience had been that use of Interpol channels was essential. He appreciated however, the advantages of adopting a flexible provision. He supported the amendment proposed by China.

31. Mr. POPOV (Bulgaria) also favoured reference to a single authority. He pointed out that, as a non-member of Interpol, Bulgaria would not be able to make use of Interpol channels.

32. The CHAIRMAN suggested that the first sentence of paragraph 6 in the basic text should be reworded as follows:

"Parties shall designate an authority or, where necessary, authorities which shall ...”.

33. It was so decided.

34. The first sentence of paragraph 6 was approved.
35. The CHAIRMAN invited the Committee to consider the second sentence of paragraph 6.

36. Mr. DZIETAM (Cameroon) said that his delegation would prefer to see no reference to Interpol in the paragraph.

37. Mr. AL-ALSHEIKH (Saudi Arabia) supported the amendment submitted by China (E/CONF.82/C.1/L.34).

38. Mr. ARAIN (Pakistan) also supported the Chinese amendment. His delegation could not support the deletion of the last phrase of paragraph 6.

39. Mr. PELEGRINO (Brazil) wished to see the paragraph refer to the diplomatic channel and the use of Interpol facilities reserved for exceptional circumstances.

40. Mr. RIZVI (Observer for the International Criminal Police Organization (ICPO/Interpol)) said he was pleased that the Committee appreciated the role which Interpol could play in implementing the provisions of article 5. Interpol channels were in fact already being used by the 147 members of Interpol, not only for the passage of crime-related information but also for the transmission of judicial documents from one law enforcement agency to another.

41. The CHAIRMAN suggested that the Committee should approve the second sentence of paragraph 6, amended as proposed by China (E/CONF.82/C.1/L.34), with the modification proposed by the representative of Australia.

42. It was so decided.

43. Paragraph 6, as a whole, as amended, was approved.

44. Mr. CASAS (Spain) suggested that, for the purpose of expediting consideration of the remaining paragraphs of article 5, the Committee should discuss only those parts of those paragraphs which appeared in square brackets in the draft convention. Other matters could of course be raised, but only matters of special importance to individual countries, such as might impede their accession to the convention.

Paragraph 7

45. Mr. LAVIÑA (Philippines) proposed that all the wording in square brackets in paragraph 7 should be deleted.

46. Mr. OUCHARIF (Morocco) proposed that the paragraph should read simply: “Requests shall be made in writing in a language acceptable to the requested Party.”

47. Ms. VOLZ (United States of America) supported that proposal. Obviously no Party could entertain a request submitted in a language which it could not understand.

48. Mr. BRUCE (Ghana) said that the wording in the first square bracket could well be deleted, since detailed arrangements could be made between the Parties. The wording in the second square bracket should be included in the paragraph, however, to cover urgent cases.

49. Mrs. GOLAN (Israel) stressed the need to include in the paragraph the words “in a language acceptable to the requested Party”. It was necessary for the Parties concerned to agree on the language to be used, for difficulties were otherwise bound to arise. To give the example of her country, unless provision for such agreement were made, it would be possible for it to make in Hebrew requests for mutual legal assistance.

50. Her delegation did not favour the inclusion in the paragraph of the third sentence, but could accept it if there was a consensus in its favour.

51. Mr. SCHUTTE (Netherlands) said that his delegation’s position was similar to that of Morocco. It wished to see the last sentence of paragraph 7 deleted and the remainder of the paragraph retained.

52. Mr. GUNEY (Turkey) said that his delegation could not accept the portion of the first sentence and the second sentence which appeared between square brackets in paragraph 7. He suggested that the first sentence should read: “Requests shall be made in writing in one of the official languages of the United Nations”. Delays and complications would result if countries were allowed to use any language they chose.

53. Lastly, his delegation favoured the inclusion in the paragraph of the last sentence, which allowed a request to be made orally in urgent circumstances.

54. Mr. BAЕYENS (France) suggested that the text of paragraph 7 should be confined to what was really necessary; namely: “Requests shall be made in writing in a language acceptable to the requested Party”. The remaining provisions should be dispensed with, as they dealt with matters which the Parties concerned were able to settle between themselves.

55. Mr. BERRADA (Morocco) supported the suggestion by the Turkish representative to specify that the request should be in one of the official languages of the United Nations.

56. Mr. PAREJO GONZALEZ (Colombia) opposed the idea of introducing a reference to the official United Nations languages. The opening sentence should be confined to the statement: “Requests shall be made in writing in a language acceptable to the requested Party”. He pointed out that the requesting Party might quite well choose to use an official language of the United Nations which was not acceptable to the requested Party. His delegation proposed the deletion of the second sentence of the paragraph, which provided for notification to the Secretary-General.

57. He considered the last sentence of the paragraph useful and worth retaining.

58. Mr. BERRADA (Morocco) suggested the following re-wording for the first sentence: “Requests shall be made
in writing in an official language of the United Nations which is acceptable to the requested Party”.

59. Mr. ENGREN (Sweden) favoured approving the entire text of paragraph 7, and therefore deleting all the square brackets.

60. Mr. LAVIÑA (Philippines) said that his delegation had doubts regarding the advisability of specifying a language “acceptable to the requested Party”. If that formula was employed China, for example, could insist on requests being made to it in Chinese, a requirement with which the requesting Party might be unable to comply. He therefore proposed that the first sentence of paragraph 7 should read: “Requests shall be made in writing in a language agreed by the Parties”.

61. The CHAIRMAN said that there was no intention to construct under the convention a system of ancillary agreements.

62. In the light of the discussion, he took it that the Committee agreed to retain the first sentence of paragraph 7, and therefore deleting all the square brackets.

63. It was so decided.

64. The CHAIRMAN invited the Committee to consider the last sentence of paragraph 7.

65. Mr. AFFENTRANGER (Switzerland) said that the Swiss authorities’ experience with requests made orally had been unfavourable. His delegation therefore proposed the deletion of the last sentence of paragraph 7.

66. Mr. GUINAZU (Argentina) favoured removal of the square brackets from the last sentence of paragraph 7. He suggested, however, the insertion of wording which would make the use of oral requests conditional on the prior agreement of the interested Parties.

67. Mrs. MOLOKWU (Nigeria) favoured retaining the provision in the last sentence of paragraph 7. She stressed that the oral request would have to be “confirmed in writing forthwith”.

68. Mrs. DZIETAM (Cameroon) also favoured removing the square brackets from the last sentence of paragraph 7.

69. Mr. POPOV (Bulgaria), Mr. FAKHR (Islamic Republic of Iran), Mr. CASAS (Spain) and Mr. WILKITZKI (Federal Republic of Germany) expressed themselves in favour of deletion of the last sentence.

70. Mr. MADDE1 (Jamaica) urged that the last sentence should be retained.

71. Mr. TIYAPAN (Thailand) also opposed deletion of that sentence.

72. Reverting to the first sentence of paragraph 7, he indicated that it was his delegation’s understanding that the words “in writing” in that sentence covered any form of writing, such as telex messages.

73. Mr. AL-ALSHEIKH (Saudi Arabia) said he had no difficulty in approving the provision in the last sentence of paragraph 7, because it was optional in character, as was indicated by the words “if acceptable to the requested Party”.

74. Mrs. KATHREIN (Austria) and Mr. OMAR (Afghanistan) supported the proposal to delete the last sentence.

75. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the last sentence of paragraph 7, with the insertion of the words “and where agreed by the Parties” after the word “circumstances”, as suggested by the representative of Argentina, on the understanding that the provision did not create any obligation for the Parties but simply offered the possibility of making an oral request under other agreements.

76. It was so decided.

77. Article 5, paragraph 7, as amended, was approved.

Paragraph 8 (E/CONF.82/C.1/L.26, L.35)

Subparagraph 8(a)

78. Mr. POPOV (Bulgaria) suggested the deletion of the words “and function” in subparagraph (a). The present language would appear to suggest the need to give an explanation of the functions of such bodies as the Ministry of Foreign Affairs or the Police.

79. Mr. LAVIÑA (Philippines) agreed with the previous speaker and suggested that the word “function” should be replaced by “designation”.

80. Mr. YU Jingming (China) considered it sufficient to indicate the name of the authority making the request.

81. The CHAIRMAN observed that in both the expert group and the Review Group there had been considerable discussion of the wording of subparagraph 8(a). He suggested that the word “function” should be replaced by “indication”.

82. Mr. LAVIÑA (Philippines) found the term “indication” unduly vague.

83. Mr. SCHUTTE (Netherlands) pointed out that in article 5, paragraph 6, it was stated that “Parties shall designate an authority”. It was therefore preferable, in order to avoid any misunderstanding, not to use the word “designation” in subparagraph 8(a).

84. Mr. CASAS (Spain) suggested that the term “identificación” would be appropriate in the Spanish version.

85. Mr. BRUCE (Ghana) said that, for the English version of the subparagraph, he much preferred to retain the term “function”.

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86. Mr. LAVIÑA (Philippines) preferred to see the words “and function” deleted.

87. Mr. PAREJO GONZALEZ (Colombia) considered the word “identificación” inappropriate for the Spanish version.

88. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved subparagraph (a), subject to the replacement of the word “function” by the word “identity”.

89. It was so decided.

Subparagraph 8(b)

90. Mrs. KATHREIN (Austria) said that the phrase “including a summary of the relevant facts” should be included in the subparagraph. She suggested that the question of the word “investigation” and its relationship with the word “investigations” in article 5, paragraph 1, might be dealt with in the Drafting Committee.

91. Mrs. PONROY (France), supported by Mrs. GOLAN (Israel), said that the phrase in brackets should be amended to read “including, where appropriate, a brief summary of the relevant facts”. If notification was being given of a judicial act, it would be inappropriate to give a summary of the relevant facts. Any summaries which were required must be brief.

92. Mr. AFFENTRANGER (Switzerland) said that it was important for summaries of the relevant facts to be included in requests. He agreed, however, with the representative of France that there were circumstances which did not require the inclusion of a summary.

93. Mr. SCHUTTE (Netherlands) proposed that a new subparagraph (b) bis should be added to paragraph 8, providing that requests for mutual legal assistance should contain: “a summary of the relevant facts, except for requests for the purpose of service of judicial documents”.

94. Mr. YU Jingming (China) said that he could agree to retention of the phrase “including a summary of the relevant facts” in subparagraph 8(b) or to a separate subparagraph referring to a summary.

95. Mr. TIYAPAN (Thailand) agreed with the previous speaker: summaries of the relevant facts would be required if requests for mutual legal assistance were to be processed properly.

96. Mr. OSHIKIRI (Japan) said that the phrase “including a summary of the relevant facts” should appear in the subparagraph. It should be made clear that no action taken under the provisions of the subparagraph should violate the domestic law of a Party.

97. Mr. BROOME (Australia), supported by Mrs. KATHREIN (Austria), was opposed to the use of the phrase “when appropriate” in the subparagraph and suggested that the wording proposed by the Netherlands representative should be adopted, but included as part of subparagraph 8(b).

98. Mr. LAVIÑA (Philippines) supported the French representative’s proposal. It was short, and contained the gist of the Netherlands proposal.

99. Mr. MADDEN (Jamaica) said that he would prefer to see the phrase “including a summary of the relevant facts” in the subparagraph, but could accept it as a separate paragraph. Referring to the French representative’s proposal, he asked who would be called upon to decide what was “appropriate”.

100. The CHAIRMAN pointed out that expressions such as “where appropriate” appeared elsewhere in the draft convention.

101. Mr. OSHIKIRI (Japan) objected to the use of the expression “where appropriate”; the provisions of the subparagraph were meant to be obligatory, whereas that expression made them discretionary.

102. The CHAIRMAN noted that the phrase “service of judicial documents” in the Netherlands proposal appeared in article 5, paragraph 3, which had been approved, and that the other points raised in connection with subparagraph 8(b) should be left to the Drafting Committee.

103. He suggested that the Committee should approve the new subparagraph (b) bis proposed by the representative of the Netherlands.

104. It was so agreed.

Subparagraph 8(c)

105. Subparagraph 8(c) was approved.

Subparagraph 8(d)

106. In reply to a question from Mr. MADDEN (Jamaica), the CHAIRMAN said that the decision implied by the words “where necessary” was left to the goodwill of the Parties.

107. Mrs. DZIETHAM (Cameroon) said that the words “where necessary and possible” should be deleted: the identity, location and nationality of the person concerned should always be given.

108. The CHAIRMAN observed that the expert group had taken the view that the word “person” in the subparagraph did not necessarily mean only the accused. The “person” referred to might be one whose testimony was required.

109. Mr. MADDEN (Jamaica) proposed the deletion of the words “necessary and”, and the replacement of the words “the person” by “any person”.

110. Mr. CASAS (Spain) supported the proposal to delete the words “necessary and”.

111. The CHAIRMAN suggested that subparagraph 8(d), amended as proposed by the representative of Jamaica, should be approved.

112. It was so decided.

114. Mrs. GOLAN (Israel) said that Israel’s proposal (E/CONF.82/C.1/L.26) was intended to expand the list of contents of requests for mutual legal assistance so that the convention might serve as a basis for such assistance in the absence of a bilateral agreement between Parties.

115. Mr. MADDEN (Jamaica) said that the proposed subparagraph 8(e) in document E/CONF.82/C.1/L.35 submitted by his delegation should be corrected to read:

“(e) the purpose for which the evidence, information or action is sought.”

The purpose of the amendment was to enable requested Parties to gain an appreciation of the circumstances surrounding the request for their assistance.

116. The CHAIRMAN pointed out that the substance of the proposed subparagraph (g) in the Israeli amendment was close to that of the subparagraph (e) proposed by Jamaica.

117. Mr. BRUCE (Ghana) said that the Israeli amendment would render paragraph 8 bis unwieldy. He pointed out that paragraph 8 bis made provision for a request by the requested Party for additional information. The Israeli proposal was therefore perhaps redundant.

118. Mr. OSHIKIRI (Japan), Mr. AL-MUBARAKI (Kuwait) and Mr. BAEGYENS (France) agreed with the representative of Ghana’s remarks.

119. Mr. PAREJO GONZALEZ (Colombia) said that subparagraphs (e) and (f) of the Israeli amendment were useful, and possibly more important than subparagraphs (a), (b), (c) and (d) in document E/CONF.82/3. Paragraph 8 bis made provision for requests for additional information, but, in practice, the requesting and provision of additional information took too much time. A copy of the court order or judgement relevant to the request and the applicable provisions of the penal law should accompany a request for mutual legal assistance.

120. Mr. ARENA (United States of America) said that while the subparagraph (e) of the Israeli amendment was not necessary, the subparagraph (f) might be useful. Paragraph 8 bis in document E/CONF.82/3 should nevertheless be retained. He agreed that the subparagraph (g) of the Israeli amendment was similar in substance to the Jamaican amendment, but he preferred the language of the latter. He pointed out that the Committee, in considering paragraph 10 of article 5, would have to take a decision on the matter of disclosure of information or evidence furnished by the requested Party, and an indication of the purpose of a request therefore would be useful in that regard.

121. Mr. SAMIA (Libyan Arab Jamahiriya) supported the text in document E/CONF.82/3 and proposed that the Israeli amendment be rejected.

122. Mr. WILKITZKI (Federal Republic of Germany) agreed with the United States representative’s remarks but suggested that subparagraph (f) in the Israeli amendment might be included in subparagraph (b) of the basic text under discussion.

123. Mr. SCHUTTE (Netherlands) suggested that subparagraph (e) of the Israeli amendment was not necessary. Furthermore, he could envisage a situation where, under subparagraph (f), the requested Party might have to send the whole of its penal code. It was sometimes difficult to know what was the connection between the assistance requested and the matter being investigated until after the investigation had taken place. He welcomed the spirit of the Jamaican amendment, and thought it might be useful to know whether the “person concerned” referred to in subparagraph (d) was a suspect or a witness. That knowledge could affect the way the interview was conducted and the legal validity of any information gained. He wondered what was the relationship between the word “purpose” in the Jamaican amendment and the word “purposes” in article 5, paragraph 10.

124. Mr. BOBIASZ (Canada) said he was in general agreement with the previous speaker. However, in his view, the solution to the problem might lie in paragraph 8 bis. That paragraph could be broadened by inserting at the beginning of it the words “The requesting Party may provide and”. The types of information mentioned in the Jamaican and Israeli amendments might be very necessary, depending on the circumstances of the request.

125. Mr. AL-ÖZAIR (Yemen) objected to the addition of any subparagraphs to paragraph 8 as it appeared in the basic text. The substance of the Israeli and Jamaican amendments was to be found elsewhere in the text which had been approved by the Committee.

126. Mr. CASAS (Spain) agreed that the new subparagraphs proposed were superfluous. Paragraph 1 of article 5, with its reference to offences established in accordance with article 2, paragraph 1, was sufficient to pinpoint the kind of mutual legal assistance required.

127. Mr. AL-ALSHEIKH (Saudi Arabia) said that paragraph 8 bis in the draft convention should not be tampered with. It was very clear, and under it, all the information needed to consolidate co-operation between Parties could be provided.

128. The CHAIRMAN suggested that the Committee might wish not to adopt the amendments proposed in document E/CONF.82/C.1/L.26 and to approve the proposal for a new subparagraph (e) in document E/CONF.82/C.1/L.35, as modified by the Jamaican representative.

129. It was so agreed.

The meeting rose at 1.05 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 5 (continued)

Paragraph 8 bis (continued)

1. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved article 5, paragraph 8 bis.

2. It was so decided.

Paragraph 9 (E/CONF.82/C.1/L.26)

3. Mr. AFFENTRANGER (Switzerland) pointed out that there was a difference, which had substantive implications, between the French and English versions of the first phrase of paragraph 9. He suggested that the former should be aligned with the latter, the word “satisfaite” being replaced by “exécutée”.

4. The CHAIRMAN said that the need for that correction had been noted.

5. Mrs. GOLAN (Israel) introduced the amendment submitted by her delegation in document E/CONF.82/C.1/L.26, which proposed the addition to paragraph 9 of a provision calling on the requested State to give serious consideration to implementing a request for taking evidence. Such a provision was deemed necessary in the light of Israel’s experience of cases where there had been refusal of a request to carry out, in another country, the cross-examination of witnesses which was specifically called for in Israeli law, and without which the evidence could not be accepted in its courts.

6. Mr. POPOV (Bulgaria) preferred the text of paragraph 9 as it appeared in document E/CONF.82/3, with the words in brackets deleted. He did not consider the proposed addition to the paragraph necessary.

7. Mr. AL-OZAIR (Yemen) also thought that the phrase in brackets added nothing useful to the text of the paragraph, which would gain in clarity if it were deleted.

8. Mr. OUCHARIF (Morocco) also favoured deletion of the phrase in brackets.

9. Mr. OSHIKIRI (Japan) took the same view concerning the words between brackets. He had some difficulty with the qualifications “to the extent not contrary” and “where possible” in the text of the paragraph, but welcomed the importance clearly attached in the provision to domestic law. His delegation had an open mind so far as the amendment submitted by Israel was concerned.

10. Mr. FOFANA (Senegal) agreed that inclusion in the paragraph of the words between brackets could introduce confusion. At least so far as his own country was concerned, the amendment proposed by Israel was unjustified: according to Senegalese legislation, witnesses were compelled to appear, obliged to give evidence and placed on oath to tell the truth.

11. Mr. FAIOLA (Italy) considered the addition proposed by Israel unnecessary.

12. Mrs. KATHREIN (Austria) preferred to see no change in or addition to the draft paragraph.

13. Mrs. MOLOKWU (Nigeria) also preferred the text as drafted, but without the bracketed phrase.

14. Mr. ASHOUR (Libyan Arab Jamahiriya) took the same view. He could not accept the amendment proposed by Israel.

15. The CHAIRMAN said it appeared to be the general view that the phrase in brackets should not be included in paragraph 9. The point dealt with in the Israeli amendment seemed to be covered by the last phrase of the paragraph, after the word “possible”. In the absence of objection, he would take it that the Committee approved paragraph 9 with the bracketed phrase deleted.

16. It was so decided.

Paragraph 10 (E/CONF.82/C.1/L.37)

17. Mr. AFFENTRANGER (Switzerland) said that his delegation was categorically opposed to any derogation from the principle of absolute confidentiality of information or evidence furnished by the requested Party. It therefore strongly urged the deletion of the bracketed phrase at the beginning of paragraph 10. Should it be alone in seeking deletion of that phrase, it would press the amendment contained in document E/CONF.82/C.1/L.37.

18. Mr. BAEYENS (France) said that in his delegation’s view the obligation on the requesting Party indicated in paragraph 10 should become effective only if the requested Party so required: it consequently favoured retention of the phrase in brackets.

19. Mr. ENEGREN (Sweden) said that his delegation considered it important that the phrase in brackets be included in the text of paragraph 10.

20. Mr. LAVIÑA (Philippines) agreed with the representative of Switzerland that the confidentiality of
information or evidence furnished should be maintained. The obligation on the requesting Party outlined in the paragraph should be automatic, and not subject to a requirement by the requested Party.

21. Mr. SHING (Mauritius) shared the views expressed by the representatives of Switzerland and the Philippines. There should be absolute confidentiality in all cases, without exception, and the bracketed phrase in paragraph 10 should be deleted.

22. Mrs. KATHREIN (Austria) strongly favoured the inclusion in the paragraph of the words in brackets.

23. Mr. OUCHARIF (Morocco) said that confidentiality should be maintained in all circumstances; the bracketed words should therefore be deleted.

24. Mr. POPOV (Bulgaria) said that he was of an open mind concerning the deletion or retention of the bracketed words. Pending the emergence of a majority in favour of one course of action or the other, he suggested, as a semantic simplification, that the phrase “without the prior consent of the requested Party” at the end of the paragraph should be shortened to read “...without its prior consent.”

25. Mr. FAKHR (Islamic Republic of Iran) supported the remarks of the previous speaker.

26. Mr. MADDEN (Jamaica) favoured the deletion of the bracketed words. In his view, it should be for the requesting Party to address itself to the requested Party if it desired or intended to depart from the conditions laid down in the paragraph.

27. Mr. AL-ALSHEIKH (Saudi Arabia) said that he shared the views of the representative of the Philippines, and favoured the deletion of the bracketed words.

28. Mr. AL-MUBARAKI (Kuwait) said that the information or evidence furnished should be unconditionally treated as classified material. Consequently, the words in brackets should be deleted.

29. Mr. SASTROHARDOYO (Indonesia) said that the confidential nature of information and evidence furnished should be automatic. The bracketed words should consequently be deleted. He supported the Bulgarian representative’s suggestion concerning the final part of the paragraph.

30. Mr. GRAVESEN (Denmark) said that his delegation would like to see the phrase in brackets included in the paragraph.

31. Mr. WOLTRING (Australia) endorsed the views expressed by the representative of Switzerland. If the Committee decided to include the bracketed phrase in the paragraph, his delegation would support the Swiss amendment (E/CONF.82/C.1/L.37).

32. Mr. PAREJO GONZALEZ (Colombia) said that he favoured inclusion of the bracketed words. He drew attention to the fact that the Spanish version of the paragraph failed to make it perfectly clear that the disclosure or use by the requesting Party of information or evidence furnished by the requested Party must be subject to the latter Party’s consent.

33. Mr. GUÍNAZU (Argentina) agreed that the Spanish version of paragraph 10 should be properly aligned with the other language versions. His delegation favoured the deletion of the bracketed phrase in the paragraph.

34. Mr. SKELEMANI (Botswana) observed that there seemed to be valid reasons both for inclusion and for deletion of the bracketed phrase. His own view was that a Party which went to the trouble of supplying or helping to provide information or evidence should not be obliged to specify in advance whether or not that material should be treated as confidential. He consequently favoured the deletion of the bracketed phrase.

35. Mr. FOFANA (Senegal) pointed out that the will of the requested Party was taken into account in the last phrase of the paragraph. He stressed the importance of absolute confidentiality where elements of proof were concerned and said that the bracketed phrase should be deleted.

36. Mr. PAJU (Finland) wished to see the phrase in square brackets included in the paragraph.

37. Mr. BOBIASZ (Canada) supported the inclusion of the phrase in square brackets but was prepared to accept the Swiss amendment (E/CONF.82/C.1/L.37), which should satisfy the concerns of both factions: countries desiring confidentiality could make that fact known to the Secretary-General, while others, if so inclined, could deal with the matter on a case-by-case basis.

38. Mr. PELEGRINO (Brazil) said that his delegation favoured deletion of the words in square brackets.

39. Mr. SCHUTTE (Netherlands) said that the text of paragraph 10 was ambiguous. He did not understand what was meant by “disclose” and whether it was the same as making public or passing on information to those requiring it for official purposes. Criminal trials had to be held in public. Could information furnished by the requested Party be used in open court?

40. As for the words “for purposes other than those stated in the request”, it could hardly be expected that when countries made requests for legal assistance they would be fully aware of all the purposes for which the information might be used. Could such information be used in obtaining testimony? He believed that the provision in paragraph 10 could apply only to certain specific information which the requested State wished to be kept confidential. He did not see why it should necessarily apply to information of all kinds.

41. He proposed that the words “those stated in the request” should be replaced by “those underlying the request”, which introduce a measure of flexibility. If the intention was that the information should not be used in
a criminal case other than the one for which it was requested, that should be made clear. In any event, he wished the bracketed phrase to be included in the paragraph.

42. Mrs. GOLAN (Israel) supported the proposal to delete the square brackets in paragraph 10.

43. Mr. CASAS (Spain) agreed with the Netherlands representative that the paragraph, as worded, was confusing. His feeling was that the bracketed phrase could be either omitted or included, in view of the use of the phrase "without the prior consent of the requested Party" at the end of the paragraph. The bracketed phrase seemed only to add to the confusion. He suggested that the Chairman should call for an indicative vote to determine the Committee's wishes regarding paragraph 10.

44. Mr. MADDEN (Jamaica) said that he interpreted the paragraph as meaning that if information was requested for the purpose of dealing with a particular type of offence, it should not be used without the consent of the requested Party. Mr. SHRESTHA (Nepal) endorsed the views of the Netherlands representative. Mr. ARENA (United States of America) supported the Chairman's suggestion, which clarified the text.

45. Mrs. MOLOKWU (Nigeria) said that the assistance requested under paragraph 10 was of a kind that might not ordinarily be furnished. Some degree of confidentiality must therefore be accorded to whatever information was given. She believed that there was an obligation on the part of the requesting State to use the assistance or information for the purposes for which it was requested, and that if it needed to use it for any other purposes as a matter of courtesy it should obtain the consent of the requested State.

46. Mr. SHRESTHA (Nepal) endorsed the views of the Netherlands representative.

47. The CHAIRMAN said he did not think that an indicative vote would help the Committee in its deliberations, because opinion seemed more or less equally divided. What was required was clarification of the text.

48. In order to take account of the various points which delegations had raised, he suggested that the text of paragraph 10 should be amended to read:

"The requesting Party shall not use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those underlying in the request without the prior consent of the requested Party."

49. Mr. LAVIÑA (Philippines) said that, if paragraph 10 did not include the bracketed phrase, the principles of confidentiality and courtesy would be maintained, and no confusion would arise.

50. His delegation could accept the Chairman's suggestion if it would help those which wished the bracketed phrase to be retained in the paragraph.

51. Mr. SMITH (Barbados) said that the Chairman's suggested rewording of the paragraph was largely acceptable to his delegation. However, he preferred the word "disclose" to the word "use", for without the former the requesting Party could make information available to another Party, to be used for purposes other than those specified in its request.

52. Mr. OUCHARIF (Morocco) said that he supported the wording suggested by the Chairman, but had difficulty in agreeing to the use of the word "disclose", which would complicate matters.

53. Mr. SCHUTTE (Netherlands) welcomed the Chairman's suggestion, which clarified the text.

54. With regard to the use of the word "disclose", in order to accommodate those delegations which were concerned that information provided by one State to another might not necessarily be used by that State but transferred to a third State without prior consent, he suggested that paragraph 10 should be amended to read:

"The requesting Party shall not use or transfer information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those in relation to which the request was made without the prior consent of the requested Party."

If that wording were approved his delegation would not insist on the inclusion in the paragraph of the phrase at present in brackets.

55. Mr. ARENA (United States of America) supported the text suggested by the Chairman, as amended by the Netherlands.

56. Mr. BABYENS (France) said that his delegation continued to believe that the initiative for the obligation placed upon the requesting Party should come from the requested Party and that the bracketed phrase should be included in the text.

57. However, in order to make use of the language suggested by the Chairman his delegation proposed the following wording: "The requested Party may request the requesting Party not to use information or evidence...". That wording would make it possible to delete the words "without the prior consent of the requested Party" at the end of the paragraph, which would thus end with the words "other than those stated in the request".

58. Mr. GUÍNAZU (Argentina) supported the Chairman's suggested wording.

59. With regard to the Netherlands proposal to replace the word "use" by the words "use or transfer", he pointed out that "use" already covered the idea of handling or transfer.
60. He wished the word “revelación” to be replaced by the word “difusión” in the Spanish version of paragraph 10.

61. Mr. AFFENTRANGER (Switzerland) and Mr. SMITH (Barbados) supported the Netherlands proposal.

62. Mr. CASAS (Spain) said that paragraph 10 had been drafted with a view to preserving the standards of honesty and courtesy, but its aim would not be fulfilled if the mutual legal assistance could not be used for purposes other than those stated in a request. If, for instance, an offence proved not to be drug-related, but to be, for example, embezzlement, it should be possible to use the information in the relevant criminal procedures. Since the intention was clearly that maximum use should be made of the machinery of mutual legal assistance, he proposed that the original wording of paragraph 10 in the draft convention should be retained.

63. Ms. HUSSEIN (Malaysia) supported the wording suggested by the Chairman. The Netherlands proposal to add the word “transfer” might result in ambiguity if other words were not included as well. She therefore proposed that the wording proposed by the Netherlands should be modified to read “The requesting Party shall not use or cause to be used information or evidence . . .”.

64. Mr. ENEGREN (Sweden) said that deletion of the phrase in brackets would cause considerable problems for his own country and for the other Nordic countries because of their rules concerning confidentiality and their administrative systems. He approved the French representative’s proposal, which would give all countries the necessary opportunity to protect their interests, and he urged the Committee to adopt it. If that proposal were not adopted, he would have to reserve his delegation’s position on the paragraph.

65. The CHAIRMAN suggested that informal consultations should be held in order to reach agreement on the text of paragraph 10.

66. Mr. AFFENTRANGER (Switzerland) suggested that the Committee should concentrate instead on the bracketed phrase at the beginning of the paragraph. He believed that his delegation’s amendment (E/CONF.82/C.1/L.37) constituted a compromise solution acceptable to all delegations.

67. Mr. BAEYENS (France) proposed that the Swiss amendment should be adopted.

68. Mr. LAVIÑA (Philippines) suggested that the Committee should take an indicative vote.

69. Mr. BOBIASZ (Canada) supported the Swiss amendment.

70. Mr. ARENA (United States of America) asked whether the wording in the Swiss amendment (E/CONF.82/C.1/L.37) was intended to precede the Chairman’s proposed variant of paragraph 10, as modified by the representative of the Netherlands, or to amend the original text of paragraph 10 in document E/CONF.82/3.

71. The CHAIRMAN suggested that, for the sake of clarity, the Committee should first decide whether to retain or delete the words in square brackets in the basic text of the draft convention.

72. Mr. OSHIKIRI (Japan) supported the Swiss amendment, which he thought dispelled the ambiguity of the original draft paragraph.

73. Mr. SCHUTTE (Netherlands) suggested that the Swiss amendment should be approved. He noted that there had been no objection to the text proposed by the Chairman, as modified by his delegations proposal.

74. Mr. WOLTRING (Australia) also supported the Swiss amendment.

75. The CHAIRMAN asked whether the Committee agreed that paragraph 10 should begin with the words “If the requested Party so requires, in general, through a declaration to the Secretary-General or in a concrete case . . .”.

76. Mr. LAVIÑA (Philippines) said that he found that wording unclear.

77. Mr. PAREJO GONZALEZ (Colombia) agreed with the previous speaker. He could not understand the reason for an advance declaration to the Secretary-General.

78. Mrs. GOLAN (Israel) was also unable to understand what role the Secretary-General might play. Agreements on mutual legal assistance were essentially bilateral. She preferred the wording suggested earlier by the Chairman.

79. Mrs. KATHREIN (Austria) said that since the wording suggested by the Chairman included the requirement of prior consent, the bracketed introductory phrase might not be needed. However, she would agree to the inclusion of that phrase, in conjunction with the Swiss amendment, either in the text of paragraph 10 as worded in document E/CONF.82/3 or in the text suggested by the Chairman, provided the last phrase of the Chairman’s text was omitted.

80. The CHAIRMAN, having called for an indicative vote as between two alternatives—the deletion of the phrase in square brackets which appeared in document E/CONF.82/3, and the retention of that phrase, together with the wording proposed in the Swiss amendment (E/CONF.82/C.1/L.37)—noted that the Committee appeared to approve the first of those alternatives. Consequently, paragraph 10 would begin with the words: “The requesting Party shall not disclose or use information . . .”.

81. He invited the Committee to act on the further proposals for amendment which had been made.

82. Mr. SCHUTTE (Netherlands) requested the Chairman to read out the text as so far agreed, as amended by the Chairman’s proposal.
83. The CHAIRMAN said that the text read as follows:
   "The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those underlying the request without the prior consent of the requested Party."

84. Mr. BOBIASZ (Canada) observed that the word "transmit" was no less ambiguous than "transfer". It should be followed by the words "to another State", or be replaced by "cause to be used".

85. The CHAIRMAN suggested that the paragraph should begin with the words: "The requesting Party shall not use or cause to be used information or evidence ...".

86. Mr. MADDEN (Jamaica) could not agree to the use of the word "underlying".

87. The CHAIRMAN suggested the replacement of "underlying" by "stated in".

88. Mr. AFFENTRANGER (Switzerland) said that the formula being considered covered both the use and the transmission of documents. He pointed out that documents might be transmitted to judicial bodies in the requesting country, and not only to third States. He would therefore have difficulty in approving the new variant suggested by the Chairman. In his opinion, the Committee should return to the text of the article in document E/CONF.82/3. Delegations which had difficulty with that text should seek clarification of it in the report of the Review Group.

89. The CHAIRMAN suggested, as an alternative beginning for paragraph 10: "The requesting Party shall not transmit to third States or use information or evidence ...".

90. Mr. TIYAPAN (Thailand) considered the word "disclose" more appropriate than "transmit", which was too restricted a notion. The notion of disclosure included making known, making public and conveying to a third party.

91. The CHAIRMAN said that use of the verb "disclose" could be misinterpreted as implying that the information in question could not be used in public hearings. The reference to investigations, prosecutions or proceedings was intended to cover the specific uses for which the information might be required, as well as to protect its confidentiality. He now proposed that the paragraph should read:
   "The requesting Party shall not transmit to third States, 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."

92. Mr. AFFENTRANGER (Switzerland) found that wording acceptable but suggested that the words "to third States" were unnecessary and should be deleted.

93. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the latest wording for article 5, paragraph 10, which he had proposed, amended as just suggested by the representative of Switzerland.

94. It was so decided.

Paragraph 10 bis (E/CONF.82/C.1/L.35)

95. Mr. MADDEN (Jamaica) introduced his delegation's amendment to paragraph 10 bis (E/CONF.82/C.1/L.35), which was based on the assumption that paragraph 10 covered the non-use of materials, information or evidence for purposes other than those stated in the request, but did not establish an obligation to keep such matters confidential. The proposed new subparagraph (b) would enable the requested Party to impose confidentiality, unless waived by that Party on grounds of overriding public interest put forward by the requesting Party.

96. The CHAIRMAN invited the Committee to consider first the text of paragraph 10 bis as it appeared in E/CONF.82/3. In the absence of objection, he would take it that the Committee approved paragraph 10 bis.

97. It was so decided.

98. The CHAIRMAN invited the Committee to consider the text proposed in document E/CONF.82/C.1/L.35.

99. Ms. VOLZ (United States of America) found the Jamaican amendment unacceptable. In her country evidence furnished in trial proceedings was unavoidably public, since trials were open to the public. Some material might have to be confidential, but her country would not wish it to be understood that the veil of confidentiality could be lifted only on a case-by-case basis.

100. Mr. MADDEN (Jamaica) said that the requirement of confidentiality would not apply to all information provided through mutual legal assistance. However, if there was no assurance that confidentiality would be respected, some States might decline to provide requested information.

101. Mr. SMITH (Barbados) had difficulty in understanding the Jamaican amendment, in the light of the Committee's approval of paragraph 10. He had assumed that the non-use or non-transmission of information without prior consent satisfied the requirement of confidentiality. It was clear that the requested Party must give permission for the information to be used for any purpose not stated in the request.

102. Mr. BOBIASZ (Canada) considered that the conditions which might be imposed by the requested Party were covered by the reference to "prior consent" in paragraph 10.

103. Mr. MADDEN (Jamaica) said he did not interpret the terms of paragraph 10 as offering adequate protection against disclosure. There was no specialty rule, and it was the purpose of his delegation's amendment to ensure such protection. However, if the Committee did not share his view, he would not press his delegation's amendment.
104. The amendment to paragraph 10 bis submitted by Jamaica (E/CONF.82/C.1/L.35) was rejected.


105. The introductory part and subparagraphs (a) and (b) of paragraph 11 were approved.

106. Mr. SCHUTTE (Netherlands), introducing the reformulation of subparagraph 11(c) proposed in document E/CONF.82/C.1/L.32, pointed out that an error in that text should be corrected. The words "the requesting Party" should read "the requested Party". The purpose of the amendment was to remove the ambiguity in the original wording of subparagraph 11(c). The amendment made clear that mutual legal assistance might be refused in cases where the requested Party would be unable to comply with such a request in criminal proceedings under its own jurisdiction. The requested Party should not be expected to go further at the behest of another State than it could go within the confines of its domestic law.

107. Mr. WILKITZKI (Federal Republic of Germany) supported the Netherlands amendment, which he found clearer than the text in document E/CONF.82/3.

108. Mr. BRUCE (Ghana) also supported the amendment.

109. Mr. BAHEYENS (France) had no objection to the substance of the amendment, but queried whether the case mentioned was not covered by subparagraph 11(d).

110. The CHAIRMAN pointed out that certain elements in subparagraph 11(d) had been placed in square brackets.

111. Mrs. KATHERIN (Austria) said that subparagraph 11(c) seemed broader in scope than subparagraph 11(d). She supported the Netherlands amendment.

112. Mr. MADDO (Jamaica) said that he was not opposed to the substance of subparagraph (c) but wondered if it was not already contained in article 5, paragraph 9.

113. Mr. BROOME (Australia) said that he supported the Netherlands amendment but would like to see it include the words "investigation, prosecution or proceeding" which had been used in earlier provisions.

114. Mr. MULAT (Ethiopia) supported the Netherlands amendment.

115. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved article 5, paragraph 11(c), amended as proposed by the Netherlands in document E/CONF.82/C.1/L.32.

116. It was so decided.

117. The CHAIRMAN invited the Committee to consider paragraph 11(d).

118. Mr. POPOV (Bulgaria), supported by Mr. PELEGRINO (Brazil), Mr. HEUCKE (German Democratic Republic), Mr. MULAT (Ethiopia), and Mr. NEKRASOV (Union of Soviet Socialist Republics), proposed the replacement of the bracketed words by the words "legal system".

119. Mr. SCHUTTE (Netherlands), supported by Mr. AL-ALSHEIKH (Saudi Arabia), Mr. GRAVESEN (Denmark), and Mr. DURAY (Belgium), proposed that the bracketed words should be deleted.

120. Mr. FAKHR (Islamic Republic of Iran) proposed that the word "Constitution" should be deleted and that the words "fundamental legal principles or" should be included in the paragraph.

121. Mr. ERNER (Turkey), supported by Mr. BRUCE (Ghana), proposed that the bracketed words should be deleted and that the word "law" should be replaced by "laws".

122. Mr. KABBAJ (Morocco) favoured deletion of the bracketed words and replacement of the word "law" by the word "legislation".

123. The CHAIRMAN asked whether the Committee might be prepared to approve the replacement of the bracketed words by the words "legal system" and replacement of the word "law" by the word "laws".

124. Mr. OSHIKIRI (Japan) said that his impression was that the delegations supporting the deletion of the bracketed words were not necessarily in favour of including the words "legal system" in the subparagraph.

125. Mr. POPOV (Bulgaria) opposed the use of the word "laws" since it might be construed to include various types of law such as common law, civil law, administrative law, or labour law.

126. Mr. WILKITZKI (Federal Republic of Germany) said that he would prefer the subparagraph to begin with the words "if it would be inconsistent with the legal system of the requested Party . . . ."

127. Mr. SUCHARIKUL (Thailand) considered that, if the word "laws" was used, the words "relating to mutual legal assistance" should be deleted.

128. Mr. FAKHR (Islamic Republic of Iran) said that, in his view, it was not necessary to refer to both the "legal system" and the "laws".

129. Mr. SCHUTTE (Netherlands) said that subparagraph (d) covered a particular situation where legislation relating to legal assistance provided for specific grounds for refusal. In his country, for example, a request for legal assistance might be refused if it was known that a person might be prosecuted on the grounds of race, religion or political opinion.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 5 (continued)

Paragraph 11 (continued), proposed new paragraph 11 bis (E/CONF.82/C.1/L.26, L.33)

Subparagraph (e), proposed new paragraph 11 bis (E/CONF.82/C.1/L.26)

1. Mr. OSHIKIRI (Japan) proposed that both paragraph 11(e) as proposed in document E/CONF.82/3 and the new paragraph 11 bis proposed by Israel in document E/CONF.82/C.1/L.26 should be rejected, since the substance of both proposals was fully covered by article 1 bis.

2. Mr. BAEYENS (France), Mr. OUCHARIF (Morocco) and Mr. BRUCE (Ghana) agreed.

3. The CHAIRMAN invited the Committee to delete article 5, paragraph 11(e), from the draft convention and to reject the Israeli proposal in document E/CONF.82/C.1/L.26 for a new article 5, paragraph 11 bis.

4. It was so agreed.

Subparagraphs (f), (g), (h) (E/CONF.82/C.1/L.35)

5. Mr. MADDEN (Jamaica), introducing subparagraphs 11(f), (g) and (h) as proposed in the amendment submitted by Jamaica (E/CONF.82/C.1/L.35), said that the intent of subparagraph (f) was to prevent Parties making what were sometimes called judicial "fishing expeditions" before they had definite information that a criminal offence had been or was likely to be committed. Subparagraph (g) echoed the analogous provisions in article 4, on extradition. The purpose of subparagraph (h) was to spell out in advance that the double jeopardy rule was a ground for refusal of mutual legal assistance.

Subparagraph (f)

6. Mr. BAEYENS (France) said that the proposed subparagraph (f) should be rejected. It was tantamount to an arrogation to itself by the requested Party of the requesting Party's right to decide whether there was a prima facie case to answer, and was thus an interference in the requesting Party's judicial procedures.

7. Mr. OUCHARIF (Morocco) and Mr. AFFEN-TRANGER (Switzerland) agreed.

8. Mr. WILKITZKI (Federal Republic of Germany) also agreed, and added that Jamaica's point was covered by the reference to "ordre public" in paragraph 11(b).

9. Mr. CASAS (Spain) endorsed the objections raised to subparagraph (f). The problem it addressed might be solved through the application of paragraph 8 bis, which entitled the requested Party to request additional details from the requesting Party.

10. Mr. ARENA (United States of America) agreed with the comments made by the previous speakers in all respects.

11. The CHAIRMAN said he took it that the Committee rejected the proposed article 5, paragraph 11(f).
12. *It was so agreed.*

**Subparagraphs (g) and (h)***

13. Mr. OUCHARIF (Morocco) said that, although he would not oppose the proposed subparagraph (g), it was superfluous, being covered by other provisions of the draft and also by domestic law.

14. Mrs. GOLAN (Israel) said that subparagraph (g) should be included. The text mirrored wording found in article 4.

15. Mr. BRUCE (Ghana) said that he did not object to the proposed subparagraph (g), but he agreed with the Moroccan representative that it was covered by other provisions of the draft convention. He feared that it might lead to divergent interpretations; for example, a person whom one State viewed as a terrorist might be considered a freedom fighter in another State.

16. Mr. ARENA (United States of America) said that the provisions of article 5, paragraphs 9, 11(c) and 11(d) gave the persons in question adequate protection in the matter under domestic law.

17. Mr. WELKITZKI (Federal Republic of Germany) concurred. Additional protection existed through the reference to *“ordre public”* in paragraph 11(b). He proposed that subparagraph (g) should be rejected.

18. Mr. SCHUTTE (Netherlands) said he had no objection to subparagraph (g), which might be combined with subparagraph 11(d).

19. Mr. AL-ALSHEIKH (Saudi Arabia) said that subparagraph (g) was redundant and accordingly should not be included in the draft.

20. Mr. MADDEN (Jamaica) agreed the point of his proposal could be met under domestic law provisions for the refusal of mutual legal assistance. He withdrew his proposal for article 5, paragraph 11, subparagraphs (g) and (h), on the understanding that such was the case.

**Proposed new paragraph 11 bis (E/CONF.82/C.1/L.33)**

21. Mr. ARENA (United States of America), introducing the amendment submitted by the Canadian delegation and his own in document E/CONF.82/C.1/L.33, said that its sponsors had decided to delete the first sentence of the proposed new paragraph 11 bis because it could be misinterpreted. In the second sentence, the word *“Convention”* should be replaced by the word *“article”*. The purpose of the proposal was to provide in the draft for the fact that, under some legal systems, private persons would be entitled to obtain, suppress or exclude evidence or to impede the execution of a request for mutual legal assistance made under draft article 5. That article, while recognizing those rights, should not itself give rise to any such rights under legal systems in which they did not exist. The United States had no desire to see a proliferation in the number of entities making requests for mutual legal assistance.

22. Mr. WELKITZKI (Federal Republic of Germany) said that, although the proposal contained language not found in existing agreements, he could approve it in regard to its substance if the explanation just given by the United States representative was reproduced in the Committee’s report to the Conference in plenary session.

23. Mrs. KATHREIN (Austria) agreed.

24. Mr. GONZALEZ FELIX (Mexico) supported the proposed paragraph.

25. Mrs. PONROY (France) said that it was a moot point whether conventions created rights for private persons were binding only on States. That being so, she thought the proposed paragraph was probably unnecessary and that it should be left to Parties to decide under their own systems which of the rights in question to confer on private persons.

26. Mr. OUCHARIF (Morocco) agreed with the previous speaker. If the paragraph was included in article 5, it should logically be included in many others. The proposal should be rejected.

27. Ms. HUSSEIN (Malaysia) said that it seemed implicit in article 5 that only Parties would be bound by it. Although she did not question the principle behind the proposal, she agreed with the previous speaker that the inclusion of the paragraph in article 5 would logically entail its inclusion in other articles, which might have adverse effects on the draft.

28. Mr. WOLTRING (Australia) said that the wording of the proposed paragraph was very wide. He proposed the following alternative text:

"A State Party shall only be obliged to transmit a request for assistance made on behalf of a private person where such a request has been issued by a court pursuant to the domestic law of that Party."

29. Mr. ARENA (United States of America) withdrew the joint proposal for a new article 5, paragraph 11 bis (E/CONF.82/C.1/L.33) on the understanding that the existing provisions of international law and the other provisions of the convention catered adequately for the point it addressed.

30. Mr. BOBIASZ (Canada) agreed to the withdrawal of the proposal on that understanding.

31. Mr. WOLTRING (Australia) withdrew his proposal.

**Paragraph 12***

32. Mr. SCHUTTE (Netherlands) suggested that, in line with previous decisions, the word *“proceeding”* should be added at the end of the first sentence of the wording proposed for paragraph 12 in document E/CONF.82/3.

33. Mr. OUCHARIF (Morocco) approved the paragraph as it stood, but said he would have no objection to the addition of the word *“proceeding”*. 
34. Article 5, paragraph 12, as proposed in document E/CONF.82/3, as amended by the Netherlands, was approved.

Paragraph 13

35. The CHAIRMAN reminded the Committee that it had approved the text of article 5, paragraph 13, at its 30th meeting (E/CONF.82/C.1/SR.30, para. 11). The position of the article remained to be decided. He invited the Committee to take up the additional paragraphs proposed in the basic text (E/CONF.82/3).

First additional paragraph

36. Mr. FAIOLA (Italy) strongly supported the first additional paragraph as worded in document E/CONF.82/3. It offered a necessary safeguard for persons called to give evidence in a requesting State by preventing the use of mutual legal assistance for purposes other than those envisaged in the request. It would thus facilitate the rendering of mutual legal assistance by dispelling any fear such persons might have that they could suffer prejudice through giving evidence. That principle was usually included in treaties relating to mutual legal assistance and it featured in the draft bilateral model treaty drawn up as part of the preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

37. Mr. OUCHARIF (Morocco) considered the paragraph unnecessary since detailed provisions for the immunity of witnesses already existed in bilateral conventions. In his view, the best solution would be to delete the paragraph.

38. Mr. FELEGRINO (Brazil) said that the provisions of the paragraph did not tally with his country’s penal legislation and were inconsistent with its legal practices. He therefore proposed its deletion.

39. Mr. WILKITZKY (Federal Republic of Germany) pointed out that the contents of the paragraph were not yet embodied in international law and should therefore be spelled out in the convention. Without a safe conduct clause, the scope of mutual legal assistance would be restricted, since most States had no means of persuading their citizens to respond to a summons from a foreign court. He urged representatives to seek some means of including the substance of the paragraph in the convention.

40. Mrs. GOLAN (Israel) said that the paragraph embodied a very important principle and she therefore supported its inclusion in the convention. If it did not appear in the text, the convention could not be regarded as a substitute for bilateral or multilateral agreements.

41. Mr. MADDEEN (Jamaica) also supported the inclusion of the paragraph as a means of persuading witnesses to give evidence in a requesting State. Since their presence in a foreign court depended on their consent, the convention would be unworkable without such a provision.

42. Mr. ALLAM (Egypt) said that, owing to the differences which existed between legal systems, the paragraph should be deleted. If it were retained, however, it should state that detailed provisions on the subject were contained in bilateral conventions.

43. Mr. SCHUTTE (Netherlands) considered that the paragraph should be included precisely because of the differences between legal systems. Some countries could work on the basis of written evidence or statements taken abroad, but others required witnesses to be present in court and to cross-examine.

44. He suggested a minor amendment to the second sentence to make clear how long the period of immunity lasted: the word “when” should be replaced by the phrase “on which he has been officially told or notified that”.

45. Ms. VOLZ (United States of America) supported the principle embodied in the paragraph and said that the provision would be helpful in persuading witnesses to testify. However, she had difficulties with its wording and suggested that the final clause of the first sentence, beginning with the words “nor shall advantage be taken”, should be either deleted or restricted in scope. In the second sentence, the period of 15 days seemed excessive—a relic from times when travel was slow. She would prefer the provision to be more flexible and refer to a period to be agreed by the Parties.

46. She approved the Netherlands amendment.

47. Mrs. PONROY (France) said that she agreed with the idea underlying the paragraph and approved the United States suggestion. However, she would prefer a simpler and even more flexible wording, and suggested the following text:

“The requested Party may make the application of paragraph 3 ter of this article conditional on an undertaking by the requesting Party that witnesses or experts shall not be prosecuted, detained or subjected to any restriction of their personal liberty in the territory of the requesting Party in respect of acts or convictions prior to their departure from the territory of the requested Party.”

The second sentence of the paragraph as proposed in the basic text should be deleted.

48. Mr. AFFENTRANGER (Switzerland) welcomed the idea expressed in the paragraph and was prepared to be flexible so far as the actual wording was concerned. He had doubts about the French proposal since it did not clearly spell out the general principle involved, which he regarded as highly important.

49. Mr. WOLTRING (Australia) said that he opposed the French proposal because it reduced the protection offered to witnesses in respect of civil proceedings. The Netherlands representative had correctly pointed to the fact that common law countries required witnesses to be present in court for cross-examination. Cases brought in his own country had been unable to proceed because witnesses had not been willing to travel to Australia and there was no international means of compelling them to do so.
50. He accepted the Netherlands amendment and suggested that the United States objection to the final clause of the first sentence might be met by amending it to read: “nor shall advantage be taken of the presence of the person for the purpose of civil proceedings.”

51. Mr. SEARS (Bahamas) expressed his support for the paragraph, which catered for an essential element in mutual legal assistance. He agreed to the amendments proposed by the representatives of the Netherlands and Australia.

52. Ms. KATHREIN (Austria) said that she preferred the paragraph in its original form.

53. Mr. XU Hong (China) said that he agreed in principle to the inclusion of the paragraph in the draft but would appreciate some clarification of the term “civil proceedings”. He also suggested that the term “safe conduct” should be replaced by the term “protection” or “immunity”.

54. Mr. BOBIASZ (Canada) expressed support for the principle underlying the paragraph. He had a slight preference for the more flexible version proposed by France; the original wording was too specific and might give rise to disputes. Since bilateral conventions contained provisions on immunity for witnesses and experts, it might be better to leave the details to the Parties themselves to work out.

55. Mr. ENEGREN (Sweden) said that the paragraph served a useful purpose and had his support. He agreed with the United States proposal to remove the reference to “civil proceedings”, which was too broad in scope and could create confusion. He could also accept the French proposal.

56. Mr. OSHIKIRI (Japan) pointed out that difficulties might arise in connection with the United States amendment to the second sentence since requests could be made under consular conventions as well as on a governmental basis.

57. The CHAIRMAN suggested that the question of the term “safe conduct” might be settled by agreeing to use it in the English version and leaving it to the Drafting Committee to find the appropriate expression in the other versions.

58. It was so agreed.

59. The CHAIRMAN invited the Committee to approve the first sentence of the first additional paragraph to article 5 proposed in document E/CONF.82/3, with the words “nor shall advantage . . . civil proceedings” deleted from it.

60. It was so agreed.

61. The CHAIRMAN invited the Committee to approve a second sentence for the first additional paragraph reading: “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 otherwise agreed on by the Parties, from the date on which he has been officially told or notified 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.”

62. It was so agreed.

63. The first additional paragraph to article 5 in document E/CONF.82/3, as amended, was approved.

64. Mr. Hena (Bangladesh) took the Chair.

Second additional paragraph (E/CONF.82/C.1/L.34)

65. Mr. XU Hong (China) said that his delegation’s proposal (E/CONF.82/C.1/L.34) had been submitted with the aim of clarifying the meaning of the references to ordinary and extraordinary expenses.

66. Mr. TIYAPAN (Thailand) said that his delegation did not agree that all the costs incurred in the execution of a request should be borne by the requested Party. The requesting Party stood to gain from the execution of the request and should therefore contribute to the costs.

67. Mr. BRUCE (Ghana) said that it would be wrong to expect a requested Party to defray expenses incurred outside its own territory.

68. Mr. CASAS (Spain) said that neither the wording proposed in the basic text (E/CONF.82/3) nor the amendment proposed by China were entirely clear in regard to the nature of the expenses contemplated. That situation was acceptable, however, in the interests of having a provision on the subject that was not too specific, on condition that it laid down some requirement for consultation between the Parties.

69. Mr. WILKITZKI (Federal Republic of Germany) said that, in his experience, it was often impossible to define expenses in general terms or indeed to determine them in advance. The required flexibility could be ensured by adding at the end of the first sentence the words “unless otherwise agreed by the Parties” and deleting the second sentence.

70. Mr. ARENA (United States of America) said that his delegation had no difficulty in accepting the basic text, which had the great advantage of flexibility. If the Committee wished for more precise wording which went into detail on the types of expense involved, he suggested a provision worded along the following lines:

“The requested Party shall pay all costs relating to the execution of the request except for the fees of expert witnesses, the cost of translation and transcription and personal travel allowances and expenses pursuant to paragraph 3 ter, which fees, allowances and expenses shall be paid by the requesting Party.”

71. Mr. GUÍNAZU (Argentina) said that the basic text met the requirement adequately, but might be improved by inserting after the words “the Parties shall consult” the words “prior to its execution”.

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72. Mrs. MOLOCALU (Nigeria) said that her delegation found the second additional paragraph proposed in the text document satisfactory. It was very important that any extra outlay, in particular expenses in foreign currency should be borne by the requesting Party.

73. Ms. HUSSYIN (Malaysia) said that some sharing of costs was essential. The addition to the first sentence suggested by the Federal Republic of Germany, appeared to offer a reasonable compromise.

74. Mr. WOLTRING (Australia) said that the wording in the basic text was broad in scope but had a consultation clause built into it. The Argentine proposal removed some of its flexibility, since it was not always clear at the start what scale of expenses would be incurred.

75. Mr. AL-SHARARDA (Jordan) said that the question of costs should be decided by mutual agreement. The paragraph might be redrafted to make the meaning of ordinary and extraordinary costs clearer.

76. Mr. BOBIA (Canada) said that, like the representative of the United States, he greatly appreciated the flexibility provided by the basic text. However, the more detailed wording of United States delegation's alternative proposal had no place in the convention and they would be better included in bilateral agreements. He proposed the replacement of the words "an extraordinary nature" by the words "a substantial or extraordinary nature" at the beginning of the second sentence, in order to give the Parties an opportunity to consult each other in the light of the scale of costs involved in executing a request.

77. Mr. BERRADA (Morocco) said that the wording proposed in the basic text was satisfactory. In order to emphasize the importance of consultation between the Parties, he proposed the addition to the paragraph of a sentence worded as follows: "Consultation will be carried out by the Parties to determine the terms and conditions under which the request is to be executed, listing in each case the ordinary and extraordinary expenses separately."

78. Mr. MADDEN (Jamaica) said that an important aspect of the matter had not yet been considered: the fact that expenses would be likely to vary from one country to another according to their level of technological development and infrastructure. That, too, pointed to the great importance of consultation between the Parties.

79. Mr. XU Hong (China) said that, although his delegation had proposed an amendment to the paragraph, it would accept the view of the majority of the Committee.

80. The CHAIRMAN invited the Committee to consider the following text for the paragraph:

"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 fulfill the request, the Parties shall consult to determine the terms and conditions under which the request will be executed."

81. Mr. AL-OZAIR (Yemen) commended the wording proposed in the basic text for its flexibility. He proposed the insertion of the following words at the end of the paragraph: "and the manner in which those costs will be borne."

82. Mrs. PONROY (France) said that her delegation approved the wording in the basic text and preferred it without the change suggested by the Federal Republic of Germany, which tended to water down the mandatory form of the provision. The prior consultation suggested by Argentina might equally be undesirable, since it might delay the execution of what were likely to be urgent requests.

83. Mr. TAVARES de SOUZA (Senegal) said that the paragraph under discussion involved two issues of principle. The first was that of the costs involved for the interested Parties. The second was that of the manner in which those costs should be borne. In view of the difficulty of drawing a distinction between ordinary costs and extraordinary costs, it would be best for the paragraph to state that the costs would be borne by the interested Parties on terms to be agreed between them. They could agree by telephone or telex on the settlement of minor expenses; in the case of heavy expenditure, a meeting of the Parties would be necessary to settle the matter. In any event, his delegation could not accept a text which was imprecise and could therefore lead to frequent difficulties. The conditions under which questions of cost should be settled should be determined by consultation between the interested Parties.

84. Mr. WILKITZKI (Federal Republic of Germany) said that, if the Committee decided to approve both the sentences of the second additional paragraph, he would withdraw his suggestion about the first paragraph.

85. Mr. SUCHARITKUL (Thailand) stressed that the cost of executing a legal assistance request should be borne by the requesting Party unless otherwise agreed. His delegation supported the idea that the paragraph should mention consultations, which would make for greater flexibility. It also agreed with the proposal by Yemen.

86. Mr. FAIOLO (Italy) endorsed the remarks made by the representative of France. Most requests for mutual assistance concerned the service of documents and it was unthinkable that there should be a requirement of consultation between the Parties every time a document had to be served. His delegation supported the wording proposed in the basic text, which was sufficiently flexible.

87. Mr. GUNEY (Turkey) said that his delegation endorsed the views expressed by the representative of France.

88. Mr. WOLTRING (Australia) said that his delegation could support either the basic text as it stood or the wording read out by the Chairman. As he saw it, there was a clear divergence of opinion in the Committee between those who wanted consultations to take place between the Parties in all cases, and those who thought that the costs should be borne by the requested Party except in particular
circumstances in which the matter would be resolved by consultation. His delegation strongly opposed the former view. An obligatory discussion on money matters would be highly detrimental to the speedy execution of a request.

89. Mr. CASAS (Spain) appealed to those delegations who required prior consultations to take place in every case to think what it would mean to have to hold such consultations every time the cost of an envelope and a stamp was involved.

90. Mr. AL-ALSHIEKH (Saudi Arabia) said that his delegation wished questions relating to costs to be decided following consultations between the Parties concerned, irrespective of whether the costs were ordinary or extraordinary.

91. The CHAIRMAN said that there seemed to be a clear majority in favour of the principle that the costs of executing a request should be borne by the requested Party, and against the view that there should be prior consultations on the subject in every case. That being so, he invited the Committee to consider the following wording:

"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 an extraordinary nature are or will be required to fulfill 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."

92. Ms. HUSSEIN (Malaysia) said that she preferred the wording just read out by the Chairman to the wording in the basic text.

93. Mr. BOBIASZ (Canada) approved the Chairman's latest wording.

94. Mr. WOLTRING (Australia) also approved it.

95. Mr. BERRADA (Morocco) said that his delegation supported it too, since it incorporated the amendment proposed by Yemen, which reflected the proposal made by his delegation earlier. He accordingly withdrew the Moroccan amendment.

96. The CHAIRMAN said that the United States oral amendment had also been withdrawn.

97. Mrs. KATHREIN (Austria) supported the text just read out by the Chairman.

98. Mr. MUÑOZ MALAVER (Peru) and Mr. SEARS (Bahamas) also supported it.

99. Mr. AL-ALSHIEKH (Saudi Arabia) favoured the latest wording read out by the Chairman, particularly since it incorporated the proposal by Yemen.

100. Mr. GUNGEY (Turkey) said that his delegation joined the consensus in favour of the text just suggested by the Chairman.

101. Mr. SHING (Mauritius) also approved that text.

102. Mr. TAVARES de SOUZA (Senegal) supported it as well. He pointed out that it would always be possible for his country to insist on consultations being held in appropriate cases.

103. Mr. FAKHR (Islamic Republic of Iran) said that his delegation favoured the text just read out by the Chairman.

104. Mr. Polimeni (Italy) resumed the Chair.

105. Mrs. GOLAN (Israel) withdrew her delegation's amendment in document E/CONF.82/C.1/L.26 on the subject of allowances and expenses.

106. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee approved the second additional paragraph to article 5 in the latest form in which he had read it to the Committee.

107. It was so decided.

Third additional paragraph

108. The third additional paragraph to article 5 proposed in document E/CONF.82/C.1/L.3 was approved without comment.

109. The CHAIRMAN said that the placing of the three additional paragraphs remained to be decided. He suggested that the first and second additional paragraphs should be placed immediately before article 5, paragraph 13 and become paragraphs 12 bis and 12 ter. Paragraph 13 would thus remain the concluding paragraph in article 5.

110. Mr. WILKITZKI (Federal Republic of Germany) suggested that the third additional paragraph, which dealt with reasons for refusal of mutual assistance, should be placed immediately after article 5, paragraph 11 bis.

111. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee agreed to his suggestion and that of the Federal Republic of Germany regarding the position of the additional paragraphs.

112. It was so decided.

Paragraph 3 quater (continued) (E/CONF.82/C.1/L.33)

113. The CHAIRMAN said that the matter of the additional paragraph 3 quater proposed by Canada and the United States in document E/CONF.82/C.1/L.33 had been left open at the Committee's 29th meeting (E/CONF.82/C.1/SR.29, para. 64) pending informal consultations between the sponsors of the proposal and interested delegations.

114. Ms. VOLZ (United States of America), speaking on behalf of the two sponsors of the amendment in document E/CONF.82/C.1/L.33, said that they now proposed the following text: "A Party shall not decline to render mutual legal assistance under this article on the grounds of
bank secrecy." She suggested that it might be placed immediately after paragraph 9 or paragraph 11 of article 5, but she could also agree to its being numbered paragraph 3 quater.

115. The CHAIRMAN said that there had been a consensus to include a provision in the article on those lines. The present proposal was virtually identical with the second sentence of the text proposed in document E/CONF.82/C.1/L.33. It fitted in well with the remainder of article 5 and might appropriately follow paragraph 9 bis.

116. Mr. SCHUTTE (Netherlands) suggested that the proposed wording should form paragraph 3 quater of article 5. As he saw it, the paragraph would apply only when it was the new convention which was to serve as the basis for legal assistance. In that connection he drew attention to the proposed first sentence of article 5, paragraph 5, and the provision of article 3 on bank secrecy; the latter applied inspection of the basis on which legal assistance was rendered. It would therefore be appropriate to place the new provision immediately before paragraph 5.

117. Mr. MADDEN (Jamaica) said that he would not oppose the new provision but reserved his delegation's position on the substance of the matter, in particular with regard to certain types of legal assistance.

118. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee approved the paragraph 3 quater proposed orally by the United States and Canada for inclusion in article 5.

119. It was so decided.

Paragraph 5 (continued) (E/CONF.82/C.1/L.39)

120. The CHAIRMAN invited the Committee to consider the wording for article 5, paragraph 5 proposed by the Netherlands in document E/CONF.82/C.1/L.39. In view of the approval by the Committee of a paragraph 12 ter, he suggested that the opening words of paragraph 5 should read: "Paragraphs 6-12 ter of this article shall apply . . . ."

121. It was so decided.

122. Article 5, paragraph 5, as proposed in document E/CONF.82/C.1/L.39, as completed, was approved.

Article 3, paragraph 4(d) (concluded)

123. The CHAIRMAN said that, following the approval of the various paragraphs of article 5, the Committee was now able to complete the reference to the provisions of that article which appeared in the introductory wording it had approved for article 3, paragraph 4(d). The matter had been left pending at its 7th meeting (E/CONF.82/C.1/ SR.7, para. 14).

124. Ms. VOLZ (United States of America) proposed that the reference should be to paragraphs 6 to 12 ter.

125. The CHAIRMAN said that, if there were no objections, he would take it that the Committee decided to complete the introductory wording to paragraph 4(d) of article 3, as approved by it at its 7th meeting (E/CONF.82/C.1/ SR.7, para. 15), in the manner proposed by the United States representative.

126. It was so decided.

The meeting rose at 1.20 p.m.

33rd meeting
Thursday, 15 December 1988, at 3.20 p.m.

Chairman: Mr. POLIMENI (Italy)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (E/CONF.82/3 and Corr.1) (concluded)

Article 5, paragraph 7 (concluded)

1. Mr. WOLTRING (Australia) asked the Committee to consider reinstating in article 5, paragraph 7, the second sentence of the wording originally proposed in the basic text (E/CONF.82/3).

2. The CHAIRMAN asked the Committee if it wished to re-open the discussion on article 5, paragraph 7.

3. It was so agreed.

4. The CHAIRMAN said that, in the absence of any objection to the Australian representative's suggestion, he took it that the Committee decided to insert in the wording it had approved for article 5, paragraph 7, as the second sentence of that paragraph, the following sentence: "The language or languages acceptable to each Party shall be notified to the Secretary-General."

5. It was so decided.

Article 5 bis

6. Mr. SCHUTTE (Netherlands) proposed the substitution of the words "set forth" for the word "enumerated".
He said that it would be appropriate to include the article in the draft in recognition of the existence of a method of international co-operation in criminal matters other than that provided for in article 5. The transfer of criminal proceedings from one country to another was a procedure unknown to some jurisdictions but frequently used between others. It was gaining increasing international recognition in the United Nations sphere of activity, and would be considered in relation to mutual assistance in criminal matters at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held in 1990.

7. Mr. WILKITSZKI (Federal Republic of Germany) said that he approved the proposal to include the article in the convention.

8. Mr. TIYAPAN (Thailand) said that, although he would not oppose the proposal, the notion of transferring criminal proceedings from one State to another was new to his country’s legal system and he would like time to consider its implications.

9. The CHAIRMAN pointed out that the article did not oblige the Parties to transfer proceedings, but simply indicated that they should consider the possibility of doing so.

10. He suggested the words "Transfer of proceedings" as the title of the article. Unless he heard any objection, he would take it that the Committee approved the wording of article 5 bis proposed in document E/CONF.82/3, as amended by the Netherlands and with the title which he had suggested.

11. It was so decided.

The meeting was suspended at 3.45 p.m. and resumed at 4.05 p.m.

Article 2 bis, paragraph 1(b)(ii) (concluded)

12. The CHAIRMAN invited the Committee to continue its consideration of article 2 bis, paragraph 1, postponed at its 18th meeting (E/CONF.82/C.1/SR.18, para. 80), in the light of the text of article 12 approved by Committee II.

13. Mr. WOLTRING (Australia) suggested that article 2 bis, paragraph 1(b)(ii), as proposed in document E/CONF.82/3 should be amended to read:

"(ii) the offence is committed on board a ship which that Party has been authorized to take appropriate action against 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;"

14. The CHAIRMAN said that, in view of the decision by Committee II to use the word "vessel" in article 12, that word should replace the word "ship" in the text under consideration.

15. Mr. SAPHOS (United States of America) said that he supported the Australian representative’s proposal, but thought it would make for a better text if the word "concerning" was inserted after the word "vessel" and the word "against" was deleted.

16. Mr. OUCHARIF (Morocco) said that it would be difficult to make article 2 bis, paragraph 1(b)(ii), accord with Moroccan legislation. He thought that the matter which that provision contemplated should form the subject of bilateral agreements. Moreover, he did not understand what was meant by the term "authorized".

17. The CHAIRMAN pointed out that article 2 bis, paragraph 1(b), was an optional provision. With regard to the word "authorized", his understanding was that the authorization to which it referred was the authorization envisaged in article 12, paragraph 4.

18. Mr. WOLTRING (Australia) said that he shared the understanding of the Chairman in regard to the reference to authorization. He welcomed the change proposed by the United States representative, which made it clear that authorization would be a prerequisite for any action taken under article 2 bis in accordance with article 12, paragraph 4.

19. Mr. CASAS (Spain) said that it must be made perfectly clear that action was to be preceded by authorization and that—in accordance with the wording approved by Committee II for article 12, paragraph 4(c)—it was to take place "with respect to" the vessel, persons and cargo on board and not "against" them.

20. The CHAIRMAN said that the United States suggestion seemed to meet that point. On the firm understanding that the authorization referred to in article 12, paragraph 4, must precede the action referred to in subparagraph (ii) of article 2 bis, paragraph 1(b), he invited the Committee to approve the wording for that subparagraph proposed by Australia with the changes suggested by himself and the United States.

21. It was so decided.

Preamble

22. The CHAIRMAN reminded the Committee that consideration of the preamble to the draft convention had been referred to it by Committee II. He drew attention to the amendments which had been put forward by Japan (E/CONF.82/C.2/L.34), India (E/CONF.82/C.2/L.35), China (E/CONF.82/C.2/L.36) and Argentina and 13 other States (E/CONF.82/C.2/L.37) to the preamble proposed in document E/CONF.82/3. He suggested that the preamble should be examined paragraph by paragraph.

23. It was so agreed.

First preambular paragraph (E/CONF.82/C.2/L.35)

24. The CHAIRMAN invited the Committee to approve the text of the first preambular paragraph as proposed in

25. The first preambular paragraph, as amended, was approved.

Second preambular paragraph (E/CONF.82/C.2/L.35)

26. Mr. SCHUTTE (Netherlands) approved the Indian proposal in document E/CONF.82/C.2/L.35 to replace the words “observing” and “associated” in the second preambular paragraph by the words “recognizing” and “related” respectively. In regard to the Indian suggestion to expand the notion of organized criminal activities, he thought the paragraph should be as general as possible and not single out specific criminal activities for mention.

27. Mr. AL-ALSHEIKH (Saudi Arabia) said that the qualification “illicit” had been omitted, probably inadvertently, from the reference to trafficking.

28. The CHAIRMAN noted that point and said that the draft preamble referred in several places to “drug trafficking” and “drug traffickers”, neither of which terms were employed in the substantive articles of the draft. He suggested that the Drafting Committee should be invited to ensure conformity between the language of the preamble and that employed in the body of the text.

29. It was so agreed.

30. Mr. FAIOLA (Italy) endorsed the remarks made by the Netherlands representative.

31. Mr. ERNER (Turkey) approved the proposed replacement of the word “observing” by the word “recognizing”. He concurred with the representative of the Netherlands in thinking that the paragraph should be couched in general terms. He pointed out that article 2, paragraph 3(b), used the words “international organized criminal activities”; for the sake of conformity, that formulation might be employed in the second preambular paragraph as well.

32. Mr. OUCHARIF (Morocco) said that, subject to correction in regard to the point made by the representative of Saudi Arabia, the text in document E/CONF.82/3 appeared to him to be acceptable as it stood.

33. Mr. BAEWENS (France) said that he would prefer the opening word of the French version of the paragraph to remain “constatant”, since the use of the French equivalent of the word “recognizing” would necessitate restructuring the text for linguistic reasons.

34. The CHAIRMAN said that, subject to the wish expressed by the previous speaker concerning the French version, he took it that the Committee approved the Indian proposal to replace the word “observing” by the word “recognition”.

35. It was so decided.

36. The CHAIRMAN said that, unless he heard any objection, he would take it that the Committee did not wish the paragraph to mention the examples of organized criminal activities proposed in the Indian amendment.

37. It was so decided.

38. The CHAIRMAN invited comments on the suggestion by the representative of Turkey that the expression “other associated organized criminal activities” should be replaced by the words “other international organized criminal activities”.

39. Mr. OUCHARIF (Morocco) reiterated his preference for the text as originally drafted. He pointed out that the introduction of the adjective “international” would reduce the scope of the paragraph and obscure the fact that the activities mentioned were very often of a local nature, especially in their initial stages.

40. Mr. BAEYENS (France) also expressed a preference for the text as originally drafted.

41. Mr. MGBOKWERE (Nigeria) endorsed the remarks made by the previous two speakers. In his view, the term “related” proposed by India should be accepted, in order to make the sense of the paragraph perfectly clear.

42. Mr. SAMIA (Libyan Arab Jamahiriya) favoured the text as originally drafted, subject to correction, as the Drafting Committee saw fit, in regard to the words “drug trafficking”.

43. Mr. ERNER (Turkey) said that, in view of the point made by the representative of Morocco, he would not insist on his amendment.

44. The CHAIRMAN asked whether the Committee approved the following wording for the second preambular paragraph, subject to the understanding that the organized criminal activities to which the paragraph referred could be local, but were more especially international, and that the Drafting Committee would replace the term “drug trafficking” by more suitable words wherever it occurred in the preamble: “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,”.

45. It was so decided.

Third preambular paragraph (E/CONF.82/C.2/L.35)

46. The CHAIRMAN invited the Committee to approve the text of the third preambular paragraph as proposed in document E/CONF.82/3 with the drafting amendment suggested by India in document E/CONF.82/C.2/L.35. Since the second preambular paragraph now began with the word “Recognizing”, the third should perhaps begin with the words “Recognizing also”.

47. Mr. SUN Lin (China) observed that the new preambular paragraph proposed by his delegation in document E/CONF.82/C.2/L.36 began with the words “Recognizing also”. Perhaps the Drafting Committee might be entrusted with the task of producing a harmonious sequence of introductory words.
48. *On that understanding, the third preambular paragraph, as amended, was approved.*

**New preambular paragraph (E/CONF.82/C.2/L.36)**

49. Mr. SUN Lin (China) introduced the proposal in document E/CONF.82/C.2/L.36 for a new paragraph to be inserted between the third and fourth preambular paragraphs. He said that the text proposed in that document should be amended by the insertion of the word "confiscation," before the word "extradition," a change which he thought was self-explanatory and which he understood would be generally acceptable. The examples which the proposal gave of fields in which international co-operation for suppressing the illicit traffic in drugs should be strengthened—confiscation, extradition, mutual legal assistance and controlled delivery—were taken from the approved titles of articles 3, 4, 5 and 7.

50. The CHAIRMAN suggested that the word "etc." might be deleted and the words "*, inter alia*, inserted before the word "confiscation*.

51. Mr. SUN Lin (China) agreed to that suggestion.

52. Mr. SCHUTTE (Netherlands) welcomed the idea underlying the Chinese proposal but said that his delegation would like it to be expressed in language which was as general as possible. It therefore proposed that the paragraph should read: "Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activity of illicit traffic."

53. Mr. WILKITZKI (Federal Republic of Germany) agreed that the language of the proposed new preambular paragraph should not be too specific about the kinds of mutual assistance that might be involved. He therefore approved the Netherlands proposal, which in addition to being couched in general terms, would obviate the need to decide whether confiscation was a matter of domestic law or of mutual assistance. The notion of confiscation was already amply catered for in the fifth preambular paragraph.

54. Mr. PELEGRINO (Brazil) approved the Netherlands proposal.

55. Mr. OUCHARIF (Morocco) said that, while his delegation appreciated the Chinese delegation's wish to extend the scope of the preamble, it supported the Netherlands suggestion that the proposed new paragraph should not go into too much detail about international co-operation. In his view, the new paragraph should form either the penultimate or the last paragraph of the preamble, since it summarized the considerations reflected in the other paragraphs.

56. Mr. SAMIA (Libyan Arab Jamahiriya) proposed that the amendment suggested by China should be reworded to read: "Recognizing also the importance of strengthening effective legal means for international co-operation, in accordance with national legislation, for suppressing the international criminal activity of illicit traffic*.

57. Mr. ERNER (Turkey) supported the Netherlands proposal. His delegation had no strong feelings about the placing of the new paragraph.

58. The CHAIRMAN noted that there had been wide support for the Netherlands amendment and enquired whether the Libyan proposal was supported.

59. Mr. WOLTRING (Australia) said that his delegation preferred the Netherlands proposal, since it was brief and provided the complete coverage necessary for the preamble.

60. Mr. CASAS (Spain) said that the preamble should contain general declarations of intent and avoid the use of qualifying wording such as the phrase "in accordance with national legislation" proposed by the Libyan Arab Jamahiriya.

61. Mr. BRUCE (Ghana) supported the Netherlands amendment.

62. Mr. AL-ALSHEIKH (Saudi Arabia) said that he could support either the Netherlands proposal or the Libyan proposal. The new wording should form the last paragraph of the preamble.

63. Mr. WIJESEKERA (Sri Lanka) supported the Netherlands proposal.

64. The CHAIRMAN said that, unless he heard any objection, he would take it that the Committee approved the paragraph proposed by the Netherlands, and decided that it should be placed immediately after the third preambular paragraph.

65. *It was so agreed.*

**Fourth preambular paragraph (E/CONF.82/C.2/L.35)**

66. Mr. TEWARIL (India), introducing the amendment submitted by his delegation in document E/CONF.82/C.2/L.35, said that it involved a substantive rewording of the paragraph, designed to make clearer the reason for the world community's determination to combat drug-related crimes with the utmost vigour.

67. Mrs. THISTLETHWAITE (United Kingdom) said that her delegation preferred the paragraph as it appeared in the draft convention. It had some difficulty with the words "which often" in the Indian amendment. It was difficult to say whether or not criminal organizations often penetrated into and corrupted the structures of government.

68. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the fourth preambular paragraph.

69. *It was so decided.*

**Fifth preambular paragraph (E/CONF.82/C.2/L.35)**

70. The CHAIRMAN drew attention to the Indian amendment to the fifth preambular paragraph (E/CONF.82/C.2/L.35) in which it was proposed that the
word "desiring" should be replaced by "determined" and the word "proceeds" by "ill-gotten gains".

71. Mr. MGBOKWERE (Nigeria) considered that the use of the word "determined" would strengthen the text. However, he would prefer to see the word "proceeds" retained.

72. Mr. GONZALEZ FELIX (Mexico) drew attention to the Mexican proposal in annex IV of document E/CONF.82/3 and suggested that the wording therein for the fifth preambular paragraph—with the exception of the word "resolved", which he proposed should read "desiring"—should be added after the wording in the draft convention.

73. Mr. BAHEYNS (France), Mr. WOLTRING (Australia), Mr. DION (United States of America) and Mrs. PUIGLISI (Italy) said that their delegations approved the replacement of the word "determined" by "desiring", but otherwise preferred the language of the paragraph in document E/CONF.82/3.

74. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the fifth preambular paragraph, with the word "desiring" replaced by "determined".

75. It was so decided.

New preambular paragraph

76. Mr. GONZALEZ FELIX (Mexico) said that following consultations with the delegation of Canada, his delegation proposed the inclusion in the preamble of a new paragraph to follow the fifth preambular paragraph. The new paragraph would read as follows: "Desiring to eliminate the root causes of the drug abuse problem, including the demand for drugs and the enormous profit derived from drug trafficking".

77. Mr. LEE (Canada) said that in consultations held before the Conference the delegations of Mexico and Canada had agreed to co-sponsor the amendment just introduced by the Mexican representative. The proposed new preambular paragraph would be the only one specifically referring to the drug abuse problem. He believed it was an appropriate precursor to article 10, paragraph 3, which had been approved in Committee II the previous day. He apologized to the Committee for the failure to submit the proposal as a Conference document: the two delegations had considered that the Cuban amendment to article 10, paragraph 3 (E/CONF.82/C.2/L.20), would cover the point but that amendment had been withdrawn. He urged the Committee to adopt the proposal.

78. Mr. CASAS (Spain) supported the inclusion in the preamble of the paragraph read out by the Mexican representative.

79. Mr. SAENZ de TEIADA (Guatemala) also supported the Mexican proposal.

80. Mr. VELLA (Malta) said that his delegation had an open mind concerning the Mexican proposal. He wondered, however, whether the enormous profit derived from drug trafficking was the root cause of the drug abuse problem or its consequence.

81. Mr. PORTELLA (Peru) supported the Mexican proposal.

82. Mr. SCHUTTE (Netherlands) suggested that psychotropic substances should be mentioned in the paragraph in addition to drugs.

83. Mr. BAHEYNS (France), while appreciating the desire of Mexico and other Latin American countries to have a reference to drug trafficking in the preamble, said that he hesitated to approve such a reference since there were many root causes of drug trafficking. To list them all would require several paragraphs. He therefore preferred the draft preamble without the proposed new paragraph.

84. The CHAIRMAN noted that there appeared to be a majority in the Committee in favour of adopting the Mexican proposal.

85. Mr. STEWART (United States of America) said it was unfortunate that the Committee had not had an opportunity to consider the proposal before it was introduced.

86. Like the French delegation his delegation had difficulty with the reference in the proposed paragraph to the "root causes" of the drug abuse problem.

87. If the Committee wished to include in the preamble a reference to the desire of the Conference to eliminate the drug abuse problem, the wording should not mention the root causes, but should merely state: "desiring to eliminate the drug abuse problem".

88. Mr. BRUCE (Ghana) observed that the phrase "and thereby eliminate their main incentive for engaging in drug trafficking" in the fifth preambular paragraph covered the point in the Mexican proposal concerning the enormous profits derived from trafficking. He was not in favour of including the words "root causes" in the preamble.

89. Mr. MGBOKWERE (Nigeria) supported the Mexican proposal. In his view the expression "the demand for drugs" encompassed a range of root causes of the drug abuse problem. For the suppliers, the main incentive was certainly the enormous profit to be derived.

90. The CHAIRMAN noted that there was majority support for the Mexican proposal. The final drafting would be a matter for the Drafting Committee.

91. Mr. SCHUTTE (Netherlands), supported by Mr. GONZALEZ FELIX (Mexico) and Mr. LEE (Canada), suggested that a reference should be made in the paragraph to the demand for psychotropic substances.

92. The CHAIRMAN said that, if that were done, the paragraph should refer to "narcotic drugs".

93. Mr. AL-ALSHEIKH (Saudi Arabia) considered that the meaning of the word "abuse" should be clarified.
Psychotropic substances were sometimes used for medical purposes.

94. The CHAIRMAN pointed out that the term “narcotic drugs and psychotropic substances” was used in the title of the draft convention, and in many of its articles. As for the expression “drug abuse problem”, it had been replaced in article 2 by “illicit traffic”. He suggested that those points should be resolved by the Drafting Committee.

95. He invited the Committee to approve the text of the Mexican proposal, amended to read: “Desiring to eliminate the root causes of the drug abuse problem, including the demand for narcotic drugs and psychotropic substances, and the enormous profit derived from drug trafficking”.

96. The new preambular paragraph proposed by Mexico, amended as indicated by the Chairman, was approved.

Sixth preambular paragraph (E/CONF.82/C.2/L.34 and L.35)

97. Mr. TANAKA (Japan) introduced the amendment to the sixth preambular paragraph, submitted by his delegation in document E/CONF.82/C.2/L.34. That amendment sought to give greater precision to the text.

98. He also drew attention to his delegation’s proposal, in the same document, for a new preambular paragraph to follow the sixth paragraph. That amendment sought to achieve a balance in the convention between combating illicit traffic and avoiding adverse effects on the chemical and pharmaceutical industries.

99. Mr. TEWARI (India) introduced his delegation’s proposals for amendment of the sixth preambular paragraph, submitted in document E/CONF.82/C.2/L.35. The reference to “materials and equipment” replicated similar references elsewhere in the draft convention. The other amendment was of an editorial nature.

100. The CHAIRMAN suggested that the Committee should consider the sixth preambular paragraph as worded in document E/CONF.82/3, but with all the proposed amendments incorporated. The paragraph would begin as follows:

“Considering that control measures are necessary for material, equipment and substances, including precursors, chemicals and solvents, which are essential to 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 covered under the provisions of the Single Convention...”

101. Mr. BRUCE (Ghana) expressed his support for that new version of the paragraph.

102. Mr. TRINCELLITO (United States of America) suggested that the paragraph could be made briefer by making it end with a full stop after “psychotropic substances”. He supported the inclusion of a reference to “materials and equipment”. The phrase “which are essential to the manufacture” in the Japanese amendment was in his view too strong. He would prefer the formula “which are used in the manufacture”. He believed that the substance of the proposed new paragraph concerning avoidance of any adverse effect on legitimate activities was already covered in article 8.

103. Mr. BAЕYENS (France) supported the proposals of Japan and India for amendment of the sixth preambular paragraph. He too, however, saw no need to refer to legitimate activities in the preamble.

104. Mr. WOLTRING (Australia) supported the wording for the paragraph read out by the Chairman. He suggested the addition to it of a variant of the additional paragraph proposed by Japan, to begin: “While recognizing the necessity to avoid...”.

105. Mr. LEE (Canada) supported the remarks of the United States representative.

106. Mr. SCHUTTE (Netherlands) saw no need to refer to materials and equipment in the preamble, which should refer only to the principal concerns addressed by the convention. He agreed with the United States representative that the latter part of the paragraph could be deleted. If the paragraph were to begin with the words “Considering that monitoring measures are necessary for certain substances”, the Japanese amendment would become redundant.

107. Mr. TANAKA (Japan) maintained both the amendments submitted by his delegation.

108. Mr. WILKITZKI (Federal Republic of Germany) agreed with the representative of the Netherlands, but preferred to retain the phrase “measures of supervision” in the paragraph.

109. Mr. DURAY (Belgium) favoured the text incorporating the two amendments submitted, with the latter part of the paragraph deleted. He could not support the addition of the new paragraph proposed by Japan.

110. Mr. PAREJO GONZALEZ (Colombia) said that the new paragraph proposed by Japan, although intrinsically justified, went beyond the basic aims of the convention and would not be appropriate in the preamble. The qualification of chemicals and solvents as “essential” was not appropriate either. It would be better to substitute the qualification “often used” or “frequently used”, as in article 8.

111. Mr. BERRADA (Morocco) preferred the wording “and other substances used in the manufacture”.

112. The CHAIRMAN suggested that the paragraph should be worded 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,”.
113. Mr. BAEYENS (France) considered it essential that that wording should be followed by the words which appeared after "psychotropic substances" in the text of document E/CONF.82/3.

114. Mr. BAILEY (Secretary of the Committee) drew attention to the fact that article 1 of the convention would contain definitions of narcotic drugs and psychotropic substances similar to those in the latter part of the existing sixth preambular paragraph.

115. The CHAIRMAN suggested that, on that understanding, the Committee should approve the wording for the sixth preambular paragraph which he had just read out.

116. It was so decided.

117. Mr. TANAKA (Japan) referring to his delegation's proposal for a new paragraph, to be added after the sixth preambular paragraph, suggested, for the sake of compromise, that that text be reworded to read: "Recognizing the necessity to avoid any adverse effect on legitimate activities".

118. Mr. PELEGRINO (Brazil) said that he could not accept the proposed new paragraph. The preamble was not the right place for such detailed considerations.

119. Mr. MGBOKWERE (Nigeria) agreed. He was also concerned at the use of the word "legitimate". No language should be used which might encourage drug traffickers.

120. Mr. CAJIAS KAUFFMANN (Bolivia) agreed with the representative of Brazil. If the additional paragraph proposed by Japan were accepted, it would be necessary to include a similar safeguard clause in other parts of the preamble, which would have the effect of overloading the text.

121. Mr. AL-OZAIR (Yemen) also agreed with the representative of Brazil.

122. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee rejected the proposal of Japan for the addition of a new paragraph after the sixth preambular paragraph.

123. It was so decided.

Seventh preambular paragraph (E/CONF.82/C.2/L.35)


125. Mr. SCHUTTE (Netherlands) said that he would not oppose the deletion of the entire seventh preambular paragraph of the draft convention. Such detailed concerns should not be spelt out in the preamble.

126. Mr. CASAS (Spain) and Mr. AL-ALSHEIKH (Saudi Arabia) agreed with the Netherlands representative.

127. The CHAIRMAN suggested that the Committee should agree to delete the seventh preambular paragraph.

128. It was so agreed.

Eighth preambular paragraph (E/CONF.82/C.2/L.35)

129. The CHAIRMAN drew attention to the amendment submitted by India (E/CONF.82/C.2/L.35) which would replace the word "desiring" by "determined".

130. Mr. MGBOKWERE (Nigeria) supported that change, which he felt would strengthen the paragraph.

131. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the eighth preambular paragraph, amended as proposed by India.

132. It was so decided.

Ninth preambular paragraph (E/CONF.82/C.2/L.35)

133. The CHAIRMAN drew attention to the amendment submitted by India (E/CONF.82/C.2/L.35) which would replace the word "eradication" by "elimination".

134. Mr. LEE (Canada) suggested that the proposed amendment should be considered by the Drafting Committee.

135. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee approved the ninth preambular paragraph, on the understanding that the Indian amendment thereto would be considered by the Drafting Committee.

136. It was so decided.

Tenth preambular paragraph

137. Mr. CAJIAS KAUFFMANN (Bolivia) suggested that the tenth preambular paragraph could well be combined with the ninth preambular paragraph, in view of the similarity of their subject matter.

138. The CHAIRMAN suggested that the ninth and tenth preambular paragraphs should be combined in one paragraph reading as follows: "Recognizing that eradication of drug trafficking is the collective responsibility of all States, and that co-ordinated action within the framework of international co-operation is necessary".

139. It was so decided.

Eleventh preambular paragraph

140. The eleventh preambular paragraph was approved.

Twelfth preambular paragraph

141. The twelfth preambular paragraph was approved.

Thirteenth preambular paragraph (E/CONF.82/C.2/L.35)

142. The CHAIRMAN drew attention to the amendment submitted by India, which would replace the word "complement" by "supplement". He suggested that the Committee should approve the paragraph, amended as proposed by India.
143. It was so decided.

Fourteenth preambular paragraph (E/CONF.82/C.2/L.35)

144. Mr. TEWARI (India), introducing his delegation's amendment in document E/CONF.82/C.2/L.35, said that its purpose was to remove the risk that the introductory words "Desiring to conclude an effective and operative international convention against the illicit traffic in narcotic drugs and psychotropic substances..." might be interpreted as implying that the earlier related instruments, referred to in the immediately preceding paragraph, were ineffective and inoperative. His delegation considered it preferable to refer to the desirability of "a comprehensive international convention specifically against" such traffic.

145. Mr. MGBOKWERE (Nigeria) considered it important to retain the adjective "effective" in the paragraph.

146. Mr. BAEYENS (France) suggested that the three adjectives "effective", "operative" and "comprehensive" should be used.

147. Mr. KABBAJ (Morocco) said that he would prefer the adjective "comprehensive" to be used first.

148. The CHAIRMAN suggested that the Committee should approve the following wording for the beginning of the paragraph: "Desiring to conclude a comprehensive, effective and operative international convention specifically against the illicit traffic..."

149. It was so decided.

150. The fourteenth preambular paragraph, as amended, was approved.

New preambular paragraph (E/CONF.82/C.2/L.37)

151. Mr. LECAROS DE COSSIO (Peru), introducing on behalf of its sponsors the amendment submitted in document E/CONF.82/C.2/L.37, said that the proposed new preambular paragraph, if approved, could be placed immediately after the first preambular paragraph. Its subject, the involvement of children in the drug trafficking problem, was a matter of the gravest concern. Young people and children were being widely exploited as a consumer market for drugs and as instruments for the illicit production and marketing of drugs. In third world countries, children living in poverty and abandonment were offered drugs as a means of escape from their situation of affective and material deprivation. In the developed world, drugs were offered to rich young people as a source of new sensations. The end result was invariably to turn the young person into a consumer and trafficker of drugs, thus intensifying the grip of the drug dealers.

152. Such criminal activity sapped the roots of society, and the destruction of young people also robbed humanity of its future. The responsibility for combating such an insidious phenomenon was shared by all societies in all regions of the world. An international instrument of such importance as the proposed convention could hardly fail to mention the saddest and most harmful aspect of the drug trafficking problem. The sponsors of the amendment were anxious to place on record their profound concern at the gravity of the phenomenon, and their political determination to unite their efforts in the international sphere to combat it. He hoped the other States represented at the Conference would support the amendment in that light.

153. The CHAIRMAN suggested that the Committee should consider the amendment as a proposal for a new paragraph to follow the first preambular paragraph.

154. Mr. LEE (Canada) supported the proposed amendment, the English version of which might, he thought, require some editorial improvement. The new paragraph might best be placed after the existing third preambular paragraph. That, however, was a matter for the Drafting Committee to decide.

155. The CHAIRMAN suggested that the Committee itself should decide on the placing of the proposed new preambular paragraph.

156. Mr. CASAS (Spain) supported the 18-State amendment.

157. Mr. STEWART (United States of America) endorsed the remarks of the Canadian representative.

158. Mr. BRUCE (Ghana) supported the amendment and also felt that its English wording might be improved.

159. Mr. ERNER (Turkey) and Mr. MGBOKWERE (Nigeria) also supported the remarks of the Canadian representative.

160. Mr. KABBAY (Morocco) supported the amendment and suggested that the new paragraph should be included in the preamble as its third paragraph.

161. Mr. SCHUTTE (Netherlands) said that his delegation approved the proposed new paragraph in principle but suggested that the words "in many parts of the world" should be inserted after the word "particularly" in the text of the amendment.

162. The suggestion of the Netherlands representative was adopted.

163. The new preambular paragraph proposed in document E/CONF.82/C.2/L.37, as amended, was approved.

164. Mr. ZVONKO (Byelorussian Soviet Socialist Republic) said that his delegation fully supported the concerns expressed by the representative of Peru, in view of the great increase in drug consumption among children and adults. The new paragraph just approved should, in his view, be placed near the beginning of the preamble.

165. The CHAIRMAN suggested that the text just approved should become the second preambular paragraph of the convention.

166. It was so decided.
167. The CHAIRMAN recalled that the Committee still had to decide on the appropriate place for the paragraph it had approved on the basis of the amendment proposed by China in document E/CONF.82/C.2/L.36. He suggested that that text should become the last preambular paragraph.

168. It was so decided.

169. The CHAIRMAN declared the work of Committee I concluded.

The meeting rose at 6.50 p.m.
SUMMARY RECORDS OF MEETINGS OF THE
COMMITTEES OF THE WHOLE

COMMITTEE II*

1st meeting

Monday, 28 November 1988, at 10.30 a.m.

Chairman: Mr. BAYER (Hungary)

ELECTION OF OFFICERS

1. The CHAIRMAN asked for nominations for the post of Vice-Chairman.

2. Mr. HELG (Switzerland), speaking in the name of the Group of Western European and other States, nominated Mr. van Gorkom (Netherlands) for the post of Vice-Chairman.

3. Mr. EL-HENNA WY (Egypt) requested the Chairman to postpone the election of the Vice-Chairman and Rapporteur until the President of the Conference had completed consultations with the other regional groups.

4. It was so agreed.

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (E/CONF.82/3 and Corr.1)

5. After a discussion in which Mrs. de la GARZA (Mexico), Mr. WEI (Belgium), Mr. von HENGSTENBERG (Federal Republic of Germany) and Mrs. ADEGBOKUN (Nigeria) took part, the CHAIRMAN proposed that the Committee should begin its work by taking up the draft articles before it in the following order: article 13, article 14, article 11, article 11 bis, article 7 and article 9.

6. It was so agreed.

Article 13

7. The CHAIRMAN drew attention to paragraph 34 of annex III to document E/CONF.82/3.

8. Mr. van GORKOM (Netherlands) said that his delegation approved the substance of draft article 13. However, it intended to propose an amendment to draft article 2 in Committee I in regard to the use of the words "illicit traffic"; depending on the response to that, it might suggest the replacement of the word "traffic" in article 13, paragraph 1, by the word "transport".

9. Mr. BABAYAN (Union of Soviet Socialist Republics) proposed that the words "controlled substances" should be replaced by the words "narcotic drugs, psychotropic substances and substances in Lists A and B", which would express the notion in specific terms.

10. Mr. KOCH (Denmark) agreed. He suggested that the words "suspicious substances" in paragraph 2(b) should also be replaced by more appropriate wording.

11. Mr. RAMESH (India) said that his delegation would prefer a generic formulation of the reference to controlled substances in article 13. It might wish to comment further on that point after the Committee had discussed the amendment his delegation intended to put forward to draft article 8.

12. Mr. RABAZA VAZQUEZ (Cuba) said that his delegation would like the term "patrols" in paragraph 2(c) to be replaced by the words "surveillance systems".

13. Mr. MAROTTA (Italy) supported the proposals of the USSR and Cuban representatives.

14. Mr. SABOIA (Brazil) said that his delegation welcomed the improvement suggested by the representative of the USSR but would like to hear more about the suggestion which the Netherlands delegation had said it might put forward.

15. Mr. SIBLESZ (Netherlands) said that his delegation considered the present definition of "illicit traffic" to be very wide and to cover activities which were scarcely pertinent to article 13. "Transport" might be a more appropriate term to use in that article.

16. Mr. CAMACHO (Bolivia) said that his delegation approved the use of the term "traffic" because it embraced the handling of substances prior to transport.

17. Mr. SIDI (Mauritania) also approved the use of the term "traffic" and agreed that the notions of controlled substances and suspicious substances should be expressed in greater detail.

18. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the term "illicit transport" would be too specific, since it would relate merely to the movement of substances.

19. Mr. ARENAL ALONSO (Mexico), referring to the question of controlled substances, said that article 13 should mention substances in Lists A and B. In paragraph 2(c), it would be best to replace the word "patrol" by the words "security systems".

20. Mr. SAVOV (Bulgaria) expressed his delegation's wish for a more precise formulation of the reference to controlled substances and its approval of the words "illicit traffic" in paragraph 1.

21. Mr. SUTTER (France) said that his delegation approved the use of the term "traffic" because it reflected the kind of handling operations carried out in free trade zones. The notion of controlled substances should be spelt out as precisely as possible, with mention being made of psychotropic substances and substances in Lists A and B. Since free trade zones and free ports were areas in which control was relaxed, the convention should be quite specific in indicating the control measures to be taken in those areas.

22. Mr. SIBLESZ (Netherlands) pointed out that his delegation's proposal to replace the word "traffic" by the word "transport" would depend on the outcome of the discussion in Committee I on the definition of illicit traffic. He suggested that both terms should be included in draft article 13, paragraph 1, in square brackets until the result was known.

23. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) said that his delegation approved the replacement of the words "controlled substances" by more specific language. It supported the proposal of the Cuban representative and favoured the use of the term "illicit traffic".

24. Mr. WIJESEKERA (Sri Lanka) supported the proposal of the USSR representative. He too approved the use of the term "illicit traffic", since it covered transport.

25. Mr. HOURORO (Morocco) said that his delegation also favoured the use of the words "illicit traffic", for the same reason. It supported the proposal of the USSR and Cuban representatives. In the French version of paragraph 2(c), the verb "placer" should be replaced by "prévoir".

26. Mrs. SEMICHI (Algeria) also supported the Cuban representative's proposal. She thought that the question whether to use the word "traffic" or the word "transport" might be solved by the addition to paragraph 1 of wording such as "as well as the transport of such substances" after the words "illicit traffic".

27. Mrs. ADEGBOKUN (Nigeria) said that her delegation preferred "traffic" to "transport" because the latter term was too restrictive. It supported the idea that the notions of controlled substances and suspicious substances should be spelt out in detail. The use of the term "surveillance systems" in paragraph 2(c) would strengthen the article.

28. Mr. SOLIS FALLAS (Costa Rica) agreed with the comment made by the representative of France about the word "traffic", a term which covered transport and handling processes. His delegation supported the proposal of the Cuban representative.

29. Mr. ABUTALIB (Saudi Arabia) said that his delegation approved the use of the term "illicit traffic", the suggestion to replace the words "suspicious substances" by more precise wording and the proposal to replace the word "patrols" by the words "surveillance systems".

30. Mr. EL HENNAWY (Egypt) supported the Algerian representative's suggestion since it would give the article a broader scope. The notion of controlled substances should be expressed in specific terms. He also supported the proposal of the Cuban representative.

31. Mrs. TORRES GRATEROL (Venezuela) said that the term "transport" was too limited in scope and that "traffic" should therefore be used. In order to avoid confusion, the references to controlled substances and suspicious substances should be amplified. Since the whole of paragraph 2 was designed to lay down a set of surveillance systems, her delegation felt that it would be best to retain the specific term "patrols" in paragraph 2(c).

32. Mr. PASHA (Bangladesh) said that his delegation also preferred the word "traffic" and agreed that the terms "controlled substances" and "suspicious substances" should be replaced by more detailed wording. It supported the suggestion to replace the term "patrols" by the term "surveillance systems".

33. Mr. MOAYEDODDIN (Islamic Republic of Iran) suggested that a reference should be made to transport after the word "traffic" in the first paragraph. He supported the Cuban representative's proposal.

34. Mr. SUKANDAR (Indonesia) favoured the inclusion of a reference to surveillance in paragraph 2(c). He asked for clarification of what was meant by the expression "controlled substances".

35. Mr. SHRESTHA (Nepal) said that his delegation fully agreed that specific wording should replace the terms "controlled substances" and "suspicious substances". It supported the Cuban representative's proposal. The addition of a reference to transport after the word "traffic" would amount to duplication; it would be better to place the word "traffic" in square brackets for the time being.

36. Mr. RAMESH (India) said that his delegation favoured the use of the term "illicit traffic" and agreed that the word "patrols" should be replaced by the words "surveillance systems".
37. Mr. SIDI (Mauritania) asked whether the provisions of paragraph 2(a) did not meet the point raised by the Netherlands delegation with regard to the meaning of the term “traffic” in paragraph 1.

38. Mr. CAMACHO (Bolivia) said that his delegation favoured the use of the term “traffic” in paragraph 1 because it implied an individual and unlawful activity, not necessarily involving a transport enterprise, and because in draft article 13 it referred to handling operations which took place within specified areas with no movement of substances from one place to another.

39. The CHAIRMAN said that there seemed to be a general consensus that the words “controlled substances” in paragraph 1 should be replaced by the words “narcotic drugs, psychotropic substances and substances in Lists A and B”; that the same form of words should replace the word “substances” in paragraph 2(b); and that the word “patrols” should be replaced by the words “surveillance systems”.

40. The definition of the term “illicit traffic” was to be discussed by Committee I in connection with article 1 and with the proposal of the Netherlands delegation for article 2. He therefore suggested that the Committee should leave paragraph 1 as it was but reconsider it in the light of Committee I’s decisions concerning the use of the term “illicit traffic” in draft articles 1 and 2.

41. Mr. van GORKOM (Netherlands) accepted that suggestion. He said that the question of the scope of the term “illicit traffic” would arise in regard to the opening paragraphs of other draft articles, including articles 11, 12 and 14. Whereas illicit traffic was too broad a notion for articles 2(b) and 2(c), he realized in the light of the discussion that the term “transport” might be too limited for article 13. His delegation would be ready to accept a term such as “transactions” instead.

42. He pointed out that, although free trade zones and free ports lay within States’ penal jurisdiction, they were areas in which movement took place freely, and the convention should therefore define clearly the requirements to be imposed in them.

43. Mr. SABOIA (Brazil) asked whether the word “suspicious” would remain in paragraph 2(b).

44. The CHAIRMAN said that his understanding was that it would.

45. Mrs. TESSEMA (Kenya) said that, since paragraph 2 qualified paragraph 1, the question whether to use the word “traffic” or another term in paragraph 1 might be resolved by linking the two paragraphs, for instance by the use of the words “in particular”, which were employed to link paragraphs in articles 14 and 15.

46. Mrs. SEMICHI (Algeria), supported by Mr. MBOKWERE (Nigeria), asked how paragraph 2(b) would be worded if the term “suspicious” was retained.

47. Mr. KOCH (Denmark) suggested the insertion of the words “shipments of” between the word “suspicious” and the new words which followed it. His delegation opposed the proposal made by the delegation of Kenya because paragraph 1 was mandatory, whereas paragraph 2 simply set out recommendations.

48. Mr. RAO (India) suggested the following wording for paragraph 2(b):

“To establish a detection system to discover and identify the narcotic drugs, psychotropic substances and substances in Lists A and B passing through those areas, as to their nature, including, when appropriate, the search of crew members and passengers and their baggage”.

49. Mr. SAVOV (Bulgaria) said that the term “suspicious substances” should remain in paragraph 2(b). To delete it would introduce a mandatory element in a provision which was designed solely to put forward recommendations for consideration by Parties.

50. Mr. HOURORO (Morocco) said that there might be some duplication between paragraphs 2(a) and 2(c), particularly if the word “patrols” was replaced by the term “surveillance systems”.

51. Mr. MAROTTA (Italy) proposed the following wording for the beginning of paragraph 2(b): “To establish a system to make it possible to detect suspicious cargoes with a view to identifying the narcotic drugs, psychotropic substances and substances in Lists A and B passing in or out of those areas”.

52. Mr. WIJESEKERA (Sri Lanka) supported the Danish representative’s proposal.

53. Mr. ARENAL ALONSO (Mexico) suggested, in the interests of uniformity, that the words “those areas” in paragraphs 2(b) and 2(c) should be replaced by the words “free trade zones and free ports”.

54. Mr. PASHA (Bangladesh) supported the Danish representative’s proposal in substance but proposed that the insertion should consist of the words “illicit shipments of”.

55. The CHAIRMAN asked the Secretary to read out the wording for paragraph 2 proposed by the delegation of Kenya.

56. Mrs. SANTANDER-DOWNING (Secretary of the Committee) said that it was the Secretariat’s understanding that paragraph 2 would begin with the words “the measures referred to in paragraph 1 of this article may include, in particular” and that paragraphs 2(a), 2(b) and 2(c) would begin with the appropriate noun instead of a verb.

57. Mr. KOCH (Denmark) repeated his delegation’s objection to the Kenyan representative’s proposal. The wording read out by the Secretariat would make paragraph 2 mandatory.
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58. Mr. ARENAL ALONSO (Mexico) said that his delegation preferred the wording in document E/CONF.82/3.

59. Mrs. TESSEMA (Kenya) drew attention to the use of the word "may", which made the provision discretionary.

60. Mr. MAROTTA (Italy) supported the view expressed by the Danish representative.

61. Mr. SIBLESZ (Netherlands) said that he preferred the wording in document E/CONF.82/3 because it distinguished between the general obligation of the Parties, set out in paragraph 1, and the specific recommendations indicated in paragraph 2.

62. Mrs. THISTLETHWAITE (United Kingdom) supported the views expressed by the representatives of the Netherlands and Denmark.

63. Mr. CAMACHO (Bolivia) proposed the inclusion, in paragraph 2(b), of the following sentence: "Searches of passengers and crew members shall respect human rights and be without discrimination on the grounds of race, nationality, religion or similar reasons". That was because crew members and passengers who were nationals of some countries, particularly Bolivia, Peru, Colombia and Ecuador, which were considered to be cocaine-producing countries, tended to be subjected to searches by customs and police officers which were discriminatory and ignored human dignity.

64. Mr. BOURESSLI (Kuwait) said that the question of human rights was covered by other international conventions and did not need to be mentioned in the present one.

65. Mr. WIJESEKERA (Sri Lanka) said that the matter might be dealt with in a blanket clause in the convention which would cover the entire text.

66. Mr. BABAYAN (Union of Soviet Socialist Republics), supported by Mr. von HENGSTENBERG (Federal Republic of Germany), Mr. NKU (Zaire) and Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that the Committee should not spend time on proposals which would alter the substance of the article.

67. Mr. AGUILAR (Bolivia) pointed out that the suggestion made by his delegation expressed a regional view based on the declaration issued by the Inter-American Specialized Conference in Traffic in Narcotic Drugs held in Rio de Janeiro in April 1986. In the interests of achieving a consensus on the matter, his delegation would accept the inclusion in the convention of general wording concerning respect for human rights and dignity instead of specific wording in article 13.

68. Mr. SABOIA (Brazil) and Mr. SAN MARTIN CARO (Peru) supported the views expressed by the representative of Bolivia.

69. Mr. BABAYAN (Union of Soviet Socialist Republics) welcomed the compromise suggested by the Bolivian representative.

The meeting rose at 1.10 p.m.

2nd meeting

Monday, 28 November 1988, at 4.20 p.m.

Chairman: Mr. BAYER (Hungary)

ELECTION OF OFFICERS (concluded)

1. The CHAIRMAN recalled that, at the previous meeting, the representative of Switzerland had nominated Mr. van Gorkom (Netherlands) for the office of Vice-Chairman. Since he heard no objection, he would take it that the Committee agreed to elect him as Vice-Chairman.

2. Mr. van Gorkom (Netherlands) was elected Vice-Chairman by acclamation.

3. Mr. SABOIA (Brazil), speaking on behalf of the Group of Latin American and Caribbean countries, nominated Mrs. Fernández Ochoa (Costa Rica) for the office of Rapporteur.

4. Mrs. Fernández Ochoa (Costa Rica) was elected Rapporteur by acclamation.

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 14

5. The CHAIRMAN, noting that the proposed new text of article 13 was not yet ready for distribution in all languages, invited the Committee to consider article 14, on which the Committee had before it the basic text of the
Review Group (E/CONF.82/3, pp. 72-73) and a proposal by Mexico (ibid., p. 113). He also drew attention to paragraph 34 of the Review Group’s report, according to which there was general agreement that article 14 “did not warrant any further discussion and should be forwarded as drafted by the Expert Group to the plenipotentiary conference for further consideration”.

6. Mr. ARENAL ALONSO (Mexico) proposed the insertion of the words “and the Constitution of the Universal Postal Union” after the words “Conventions of the Universal Postal Union” in paragraph 1. That would bring the text of article 14 into line with the Comprehensive Multidisciplinary Outline and also with the Inter-American Programme of Action adopted in 1986 at Rio de Janeiro.

7. He also proposed that the words “and consistent with”, which appeared before “the basic principles” in paragraph 1, should be replaced by “and in strict conformity with”. That would make it clear that the measures should be in full conformity with the basic principles of the national legal system concerned and not merely in consonance or in harmony with it.

8. Mr. van GORKOM (Netherlands) proposed that the words “illicit traffic” in the title of article 14 as well as in paragraph 1 and paragraph 2(a) should be replaced by “illicit dispatch of narcotic drugs or psychotropic substances or substances listed in List A or List B of article 8”. Moreover, the title could be shortened to read “The use of the mails”, which would be more in line with the title of article 13 (Free trade zones and free ports) and indeed that of article 11 (Commercial carriers).

9. The CHAIRMAN drew attention to the suggestion made at the Committee’s previous meeting to replace the term “controlled substances” by “narcotic drugs, psychotropic substances and substances in Lists A and B”. Since the term “controlled substances” appeared in paragraph 2(b) of article 14, he would take it that the Committee wished to make the necessary change.

10. It was so agreed.

11. Mr. SUTTER (France) said that, for the reasons it had given at the previous meeting, his delegation preferred the term “illicit traffic”, which adequately covered all acts that had the effect of placing illicit substances at the disposal of drug addicts. The term had a specific meaning in the context of transport, conversion, and utilization in certain areas such as free ports, and it was unlikely that any confusion would arise.

12. In his view the reference to “investigative techniques” in paragraph 2(b) was inappropriate since the term suggested a succession of acts in the nature of searches to establish certain facts. What was actually meant in the present instance was techniques intended to detect illicit substances in the mails. He therefore suggested the replacement of “investigative techniques” by “control techniques”.

13. Mr. WIJESEKERA (Sri Lanka) pointed out that removal of the square brackets around the word “includes” in the definition of “illicit traffic” in article 1 would have the effect of including “dispatch through the mails” among the various aspects of “illicit traffic”. He was therefore of the view that the latter term could be retained.

14. The proposed short title “The use of the mails” was acceptable since it was in line with the rest of the articles.

15. Mr. AGUILAR (Bolivia) was also in favour of the short title.

16. He expressed the view that, regardless how the term “illicit traffic” was defined in article 1, it would be advisable not to adopt too rigid an approach to the concept of illicit traffic in article 14. He therefore suggested a solution similar to the one adopted for article 13; namely, use of the broader term “narcotic drugs, psychotropic substances and substances in Lists A and B”.

17. Mrs. THISTLETHWAITE (United Kingdom) said that her delegation had misgivings concerning the replacement of “controlled substances” by “narcotic drugs, psychotropic substances and substances in Lists A and B”, since List A and List B substances had not in themselves been contemplated by the original definition of “controlled substances”. When the draft convention had first been considered, the term “controlled substances” had related solely to narcotic drugs and psychotropic substances, the unlawful use of which was subject to sanctions. That was not necessarily true of List A and List B substances, for which article 8 outlined a system of monitoring and control. For that reason, her delegation would like to reflect on the possible effect of the suggested changes.

18. The CHAIRMAN suggested that, as it would be difficult to reach a decision without knowing what substances would be included in Lists A and B, the Committee might revert to the matter in the light of the outcome of its discussion on article 8.

19. With regard to the French proposal to replace the words “investigative techniques” by “control techniques”, he felt that the difficulty might be overcome by simply saying “techniques”.

20. Mr. SUTTER (France) said that the emphasis should be on control in view of the minimum amount of control exercised over the enormous volume of letters and parcels handled by the postal services. He therefore suggested the replacement of the words “investigative techniques” by “investigative and control techniques” so as to indicate that the two operations supplemented one another.

21. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the French representative’s suggestion.

22. He was, however, somewhat concerned with a question raised with regard to the meaning of “controlled substances”. The United Kingdom delegation, for example, considered that the term did not include substances which constituted the main problem under the new convention. His own
delegation's position was that all such new substances, including semi-products and substances from which narcotic drugs or psychotropic substances could be derived, should be covered by the convention.

23. Referring specifically to article 14, he emphasized that the expression "controlled substances" should cover substances in Lists A and B, particularly as their inclusion in those lists had been the result of a unanimous decision.

24. Mrs. THISTLETHWAITE (United Kingdom) said that her delegation was concerned that the inclusion of List A and List B substances might somehow suggest that those substances were in themselves unlawful. But it had not yet been decided whether article 14 dealt with both lawful and unlawful substances or whether, on the contrary, its purpose was to prevent the dispatch of illicit consignments of substances, i.e. either narcotic drugs or substances used to make illicit drugs.

25. Her own delegation's understanding was that article 14 was designed to encourage States Parties to monitor, detect and, in due course, take action against the illicit traffic; as she saw it, that article was not intended to be simply an additional factor in the monitoring, under article 8, of those substances which might, or might not, go to make up the illicit traffic. It would thus appear necessary to introduce into article 14 a reference to the illicit purpose to which substances in Lists A and B would be put. For example, the provision in paragraph 2(a) of the article could perhaps be reinforced by introducing some phrase in paragraph 2(b), related perhaps to the question of investigating offences rather than to the monitoring of lawful trade.

26. The CHAIRMAN suggested that the point raised by the United Kingdom representative could perhaps be covered by amending the end of paragraph 2(b) to read "designed to detect illicit narcotic drugs, psychotropic substances or substances in Lists A or B in the mails".

27. Mrs. THISTLETHWAITE (United Kingdom) felt that more specific wording would be "designed to detect illicit consignments of narcotic drugs, psychotropic substances . . . ", since it would associate the adjective "illicit" with the consignments rather than the substances—regardless whether the drugs were in themselves illicit or not.

28. Mr. SABOIA (Brazil) said that, although the new convention should also cover the substances in Lists A and B, it must not have the effect of restricting the large lawful trade in certain substances.

29. The CHAIRMAN noted that the Committee had before it proposals to: (1) shorten the title to read: "The use of the mails"; (2) replace the words "consistent with" in paragraph 1 by "in strict conformity with"; (3) replace the words "investigative techniques" in paragraph 2(b) by "investigative and control techniques"; (4) replace the words "controlled substances" in paragraph 2(b) by "narcotic drugs, psychotropic substances or substances in Lists A or B"; and (5) introduce the words "illicit consignments of" before "narcotic drugs, psychotropic substances or . . . ".

30. Mr. SANOV (Bulgaria) said that his delegation would have no difficulty in accepting article 14 together with all those proposed amendments, with one exception. In the Mexican proposal, the Conventions of the Universal Postal Union appeared to be subordinated to national legal systems whereas in point of fact they were part of the international legal order.

31. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed with the previous speaker, since a State which became a Party to an international convention had to abide by its provisions. For that reason, the words "in strict conformity with" should be before the word "Conventions" rather than before the "basic principles of their respective national legal systems".

32. Mr. van GORKOM (Netherlands) also agreed with the point made by the Bulgarian representative.

33. Mr. ARENAL ALONSO (Mexico) said that his delegation considered that each Party to a UPU Convention had to abide by its own legal system when complying with its international obligations. Since the words "in strict conformity with" had given rise to difficulty, he suggested their replacement by "in compliance with".

34. Mr. SEMICHI (Algeria) supported that suggestion.

35. Mr. SABOIA (Brazil) said that his delegation would find it easier to accept the Mexican proposal in that new form. It should be borne in mind that most of the obligations assumed by States Parties in ratifying a convention implied some change in their internal law.

36. Mr. PAREJO GONZALEZ (Colombia) said that the wording eventually agreed upon should not suggest that obligations assumed by the Parties under UPU Conventions would in some way be subject or subordinated to the provisions of internal law; such provisions would, in many cases, have to be adapted in order to bring them into line with the requirements of international conventions. It should also be remembered that a State's ratification of an international convention normally involved a legislative process, which conferred upon the international obligations concerned the character of rules of internal law.

37. He was therefore in favour of retaining the original words "consistent with".

38. Mrs. de la GARZA (Mexico) said that her delegation, which attached great importance to eliminating the concept of "consistent with" the basic principles of national law, could not accept article 14 as it stood. She urged the use of the words "in compliance with".

39. The CHAIRMAN felt that a consensus might be achieved by placing the words "in strict conformity with" before "their obligations under the Conventions of the Universal Postal Union", as suggested by the USSR representative, and the words "in compliance with" before "the basic principles".

40. Mr. SABOIA (Brazil) suggested that the term "strict" should be dropped, as the reference to
"conformity" was sufficient to express the idea of false compliance with international obligations.

41. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed.

42. Mr. van GORKOM (Netherlands) emphasized that more specific wording should be used in place of "illicit traffic" in article 14 as well as in article 13. He therefore urged that the terminology used should be reviewed in the light of the conclusions reached by Committee I regarding the text of article 2, paragraph 1, and the definition to be included in article 1.

43. Mrs. de la GARZA (Mexico) drew attention to Mexico's proposed amendment to paragraph 14 (E/CONF.82/3, p. 113), and noted that it had made similar proposals in respect of certain other articles. Since her delegation was at present engaged in negotiations with a number of others in the hope of arriving at generally acceptable wording, she reserved its position on the opening words of paragraph 14 being approved by consensus provided that paragraph 2(c) was left in abeyance.

44. The CHAIRMAN said it was his understanding that the proposals which the Mexican and other delegations were preparing concerned the meaning of the opening words of paragraph 2(c); namely, "Legislative measures", which appeared in a number of other articles and stood in need of clarification.

45. Mr. BABAYAN (Union of Soviet Socialist Republics) felt that the expression "legislative measures" could be replaced by a more general expression, such as "legal and regulatory measures".

46. The CHAIRMAN suggested that the Committee should adopt article 14 on the understanding that, if necessary, and if there were any other decisions which affected the use of the term "legislative measures", it should revert to the matter and, in article 14, use the term it was decided to employ in all the articles.

47. If there was no objection, therefore, he would take it that the Committee agreed to adopt article 14 on that understanding, with the shortened title "The use of the mails", the amendment of paragraph 1 to read: "In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles ..."; and the amendment of the end of paragraph 2(b) to read: "investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Lists A and B in the mails".

48. It was so decided.

**Article 13 (continued)**

49. The CHAIRMAN suggested a short recess to enable representatives to examine the text which had emerged from the informal consultations (E/CONF.82/C.2/L.1). He read out a few minor corrections to the text and in particular noted that the opening words "To develop" in paragraph 2(b) should read "to establish".

The meeting was suspended at 5.55 p.m. and resumed at 6.35 p.m.

50. Mr. O'NEIL (Canada) thought that the beginning of paragraph 2(b) was unduly cumbersome and suggested that it could be amended to read "(b) To establish a system to detect suspect shipments of narcotic drugs, psychotropic substances and ...".

51. Mr. SUTTER (France) said that his delegation was in general dissatisfied with the wording of paragraph 2(b) and therefore proposed that it should read as follows:

"(b) to establish a system including, when appropriate, the search of crew members and passengers and their baggage, to detect narcotic drugs, psychotropic substances and substances in Lists A and B passing from time to time in or out of those areas".

52. Use of the term "from time to time" would take into account the fact that substances in Lists A and B could be the subject of lawful shipments duly declared to the customs authorities.

53. Mr. RAO (India), referring to paragraph 2(b), suggested the insertion of the word "illicit" before "narcotic drugs, psychotropic substances and ..." and the replacement of the words "suspect shipments" by "suspect consignments". It was difficult to accept the idea of "suspect shipments", which suggested the possibility of non-suspect shipments of the substances in question.

54. The French and Canadian representatives had made interesting proposals which could possibly be combined.

55. Mr. AGUILAR (Bolivia) pointed out that, in some cases, searches of crew members and passengers had resulted in abuses, while in others there had been discrimination on grounds of race, religion or socio-economic status. His delegation therefore suggested the addition of the following sentence to the end of paragraph 2(b): "This shall be done without discrimination as to race, nationality, religion or other factors, and with due regard for human dignity".

56. The CHAIRMAN drew the Bolivian representative's attention to the fact that, at the previous meeting, the representative of Sri Lanka had suggested that a blanket clause dealing with human rights and covering the entire text of the convention should be drawn up. That suggestion had met with general approval.

57. Mr. MAROTTA (Italy) suggested that paragraph 2(b) should be redrafted to read:

"(b) to establish a system which will allow the detection of suspect shipments for the purpose of identifying narcotic drugs, psychotropic substances and substances in Lists A and B passing in or out of those areas..."
and to search, when appropriate, crew members and passengers and their baggage”.

58. Mr. SIDI (Mauritania) proposed that paragraph 2(b) should be split into two new paragraphs reading as follows:

“(b) to establish a system which will allow the discovery of suspect shipments for the purpose of identifying narcotic drugs, psychotropic substances and substances in Lists A and B passing in or out of those areas;

“(c) to search crew members and passengers and their baggage.”

59. The present paragraph 2(c) would become paragraph 2(d).

60. The CHAIRMAN suggested that, as there was general agreement on the principle underlying article 14, paragraph 2(b), the delegations of Canada, France and Italy, with the assistance of the Secretariat, should examine the various proposals made and submit a combined text to the Committee at its next meeting.

61. It was so agreed.

The meeting rose at 7.10 p.m.

3rd meeting
Tuesday, 29 November 1988, at 10.20 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 13 (concluded)

1. The CHAIRMAN invited the Committee to consider the revised text which had emerged from the informal consultations between the delegations of Canada, France and Italy (E/CONF.82/C.2/L.1/Rev.1).

2. Mr. JUPPIN de FONDAUMIERE (Deputy Director, Division of Narcotic Drugs) explained that, in the revised version of article 13, the words “and, when appropriate, to perform the search of crew members and passengers and their baggage” now appeared at the end of paragraph 2(a); paragraph 2(b) dealt only with the establishment of a system to detect suspect shipments. Paragraph 2(c) was unchanged.

3. Mr. ARENAL ALONSO (Mexico) proposed that, in paragraph 2(a), the words “appropriate authorities” should be amended to read “appropriate national authorities” so as to make it clear that the authorities empowered to make the searches in question were those competent under national law.

4. Mr. RABAZA (Cuba) supported that proposal.

5. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee agreed to approve article 13 (E/CONF.82/C.2/L.1/Rev.1) together with the Mexican amendment.

6. It was so decided.

7. The CHAIRMAN invited the Committee to consider article 11 (E/CONF.82/3, p. 70) together with the definition of “Commercial carrier” in article 1.

8. He drew attention to the Review Group’s comments on article 11 (ibid., paras. 53–55, pp. 90–91) and on the definition of “commercial carrier” (ibid., paras. 22–24, p. 11), as well as to the corrected definition of “commercial carrier” in document E/CONF.82/3/Corr.1.

9. Mr. TANAKA (Japan) introduced his delegation’s amendment to article 11 (E/CONF.82/C.2/L.3*).

10. Explaining the reasons for the amendment, he pointed out that a commercial carrier had to draw up and issue to the consignors a waybill specifying the marks used for identifying the cargo, as well as either the number of packages and pieces or their quantity and weight; the name or company name of the consignors would also have to be indicated. In commercial practice, those elements were sufficient to identify the cargo. A commercial carrier who engaged in the transport of cargo on the basis of a contract of carriage with the consignors was subject only to liability arising from “treating with care”, because he could not open the packages; the commercial carrier could not inspect the contents of the cargo without the authorization of the consignors. His delegation therefore believed that it was essentially the exporter who should be subject to the liabilities and responsibilities arising from article 11.

11. Mr. TEWARI (India) said that, in his delegation’s view, the provisions of article 11 covered all types of carriers. The article itself was acceptable, although he
suggested that the end of the introductory sentence of paragraph 2 reading “to prevent the use of their means of transport for illicit traffic” should be reworded as follows: “to prevent their means of transport from being used for illicit traffic”.

12. As to the proposed definition of “commercial carrier”, he suggested the replacement of the word “benefit” by “compensation”.

13. Mr. van GORKOM (Netherlands) felt that the Japanese amendment would unduly weaken article 11, which was quite acceptable as it stood.

14. Reverting to a point he had raised previously in connection with other articles, he proposed that the term “illicit traffic” in both paragraphs of article 11 should be replaced by “illicit transport”. Mr. Siblesz of the Netherlands delegation would explain the reasons for that proposal.

15. Mr. SIBLESZ (Netherlands) recalled that, during the discussion on article 14, it had been pointed out that the definition of “illicit traffic” in article 1 could eventually be expected to consist of the statement “illicit traffic includes”, followed by a full list of the activities it was considered to cover. It had been argued that, wherever the term “illicit traffic” was used in the convention, the context should be used to construe its meaning. His delegation believed that approach to be unsatisfactory, and that the term “illicit traffic” should be replaced by a specific term appropriate to the article in question.

16. As matters stood, the term “illicit traffic” used in article 2 embraced all the activities covered by the definition of “illicit traffic” given in article 1, whereas in other articles (e.g. articles 11, 12, 13 and 14) it would cover only some of those activities.

17. Mr. SIDI (Mauritania) said that his delegation had difficulty with the words “reasonable precautions” in paragraph 2, and suggested their replacement by “sufficient precautions”.

18. Mr. WUJESEKERA (Sri Lanka) found the Japanese amendment somewhat negative and ambiguous. His delegation did not favour a change, but if one was necessary it should take a positive form, such as “The Parties shall take such appropriate measures as would be deemed desirable” (or “as would be deemed practicable”). The change would affect paragraph 1 only.

19. Mr. von HENGSTENBERG (Federal Republic of Germany) said that his delegation favoured the basic text and opposed the Japanese amendment, which would weaken it unnecessarily.

20. Mr. ASAD (Pakistan) said that the point made by the Netherlands representative was well taken. The definition of “illicit traffic” was being reviewed by Committee I, so that whenever the term appeared in an article being considered by Committee II, the latter could either await the decision of Committee I or make the term specific to the article under consideration. For the purposes of article 11, for example, it could easily be replaced by “illicit movement”.

21. Mr. SABOIA (Brazil) said that his delegation could accept article 11 as it stood. Nevertheless, in view of the proposed broader definition of the term “Commercial carrier”, the specific requirements set forth in paragraph 2 would create difficulties, especially for small or individual enterprises, and particularly in countries with a large informal sector. The paragraph should therefore be drafted more flexibly and preferably in the form of a recommendation, and for that reason, his delegation saw merit in the Japanese amendment. The general obligations set out in paragraph 1 should retain their mandatory form, however.

22. The suggestion that “illicit traffic” should be replaced by another expression was bound to create difficulties. The definition now proposed, which his delegation favoured, was of an encompassing nature which would make it possible to specify, in the context of each article, the meaning of the term “illicit traffic” that the drafters had in mind.

23. His delegation believed that paragraph 1 of article 11 bis should also remain mandatory, since the least that could be required was that exports of narcotic drugs and psychotropic substances should be properly documented. That obligation already existed under the convention now in force. Moreover, in both paragraphs of article 11 bis, the words “narcotic drugs and psychotropic substances” should be replaced by “narcotic drugs, psychotropic substances and substances in Lists A and B”.

24. The CHAIRMAN said that the Brazilian representative’s remarks on article 11 bis would be taken into account when the Committee took up that article.

25. Mr. URETA (Argentina) said that his delegation had some difficulty with the Japanese amendment, and considered that article 11 was in general acceptable as it stood. At all events, it was essential that the provisions of paragraph 1 should be framed in terms that were binding upon States. With regard to paragraph 2, he agreed with the views expressed by the Brazilian representative.

26. Referring to the proposal made by the Netherlands representative, he said that his delegation was in favour of retaining the expression “illicit traffic”.

27. He associated himself with the comments of the Brazilian representative on article 11 bis.

28. Mrs. TESSEMA (Kenya), referring to the Netherlands representative’s proposal on “illicit traffic”, emphasized that the definition of that term in article 1 had not yet been decided upon.

29. Her delegation wished to suggest two changes in respect of paragraph 2(b)(iii) of article 11. The first would make the provision it contained applicable to all commercial carriers, i.e. also to those mentioned in paragraph 2(a), and the second would be to delete the word “suspicious” before “incidents”, for obvious as well as “suspicious” incidents should be reported. The best way of
making those two changes would be to delete the present paragraph 2(b)(iii) and to insert a new separate paragraph in article 11 reading as follows:

“Each Party may require that commercial carriers report to the appropriate authorities at the earliest opportunity all incidents related to illicit traffic.”

30. Mr. BABAYAN (Union of Soviet Socialist Republics) noted, in connection with the proposed replacement of the term “illicit traffic” by another, that reference had been made to the Committee’s discussion on articles 13 and 14. However, there was a difference between articles 11 and 13. In article 13 the emphasis was on the suppression of illicit traffic in free trade zones and free ports, whereas article 11 dealt with measures to be taken to prevent illicit traffic. For that reason, his delegation was in favour of retaining the expression “illicit traffic” and supported article 11 in the form in which it appeared in the basic document.

31. Mr. PAREJO GONZALEZ (Colombia) said that his delegation was satisfied with the basic text of article 11, which was the outcome of an extensive debate in the Commission on Narcotic Drugs. It reflected adequately the objective of the States that had participated in its formulation, which was to establish suitable and effective machinery to combat illicit traffic. Article 11 was important in that it imposed binding obligations upon the States Parties, for expressions of good intent were not enough in the basic document.

32. His delegation saw no justification for replacing the generally-accepted concept of “illicit traffic” by other wording.

33. Mr. BOURESSLI (Kuwait) pointed out that the words “their means of transport” in the introductory sentence of paragraph 2 suggested that it referred only to means of transport owned by commercial carriers. He therefore suggested their replacement by a phrase that covered all means of transport used by the commercial travellers, regardless of ownership. Paragraph 1, for example, contained the broader wording “means of transport operated by commercial carriers”.

34. Mr. QI Baoxin (China) said that his delegation supported the existing wording of article 11, but suggested the addition of the words “to the competent authority of the said State” before the words “when possible” in paragraph 2(b)(i) so as to give an indication of the recipient of the cargo manifest.

35. Mr. von HENGSTENBERG (Federal Republic of Germany), referring to the Netherlands proposal regarding the term “illicit traffic”, said that when a generally-acceptable definition had been drafted, it would be necessary to review various articles in order to find separate expressions for “illicit traffic” for each one.

36. Mr. STEWART (United States of America) said that his delegation had listened with interest to the various suggestions made but found article 11 preferable as it stood.

37. He wished to place on record, however, the understanding of the open-ended intergovernmental expert group that paragraphs 2(a) and 2(b) were not mutually exclusive and that, in appropriate cases, both subparagraphs could be applied by a Party. That understanding was reflected in the report of the expert group (E/CN.7/1988 (Part II), para. 218) and it should also be reflected in the report of Committee II.

38. Mr. LeCAVALIER (Canada) noted that the wording of article 11 had been carefully negotiated. The various amendments suggested so far were either of a drafting nature suitable for consideration by the Drafting Committee or likely to weaken the article, particularly its paragraph 1, and to make it inconsistent with other articles, some of which had already been adopted.

39. Mr. HULTSTRAND (Sweden) supported the remarks of the previous speaker.

40. Mr. TANAKA (Japan) said that, in the Japanese administrative system, commercial carriers were required, under administrative guidance, to perform the acts mentioned in article 11. On the understanding that such administrative guidance—which did not constitute legislation—would fulfil the requirements of article 11, his delegation could accept its provisions as they stood.

41. The CHAIRMAN said that the Japanese representative’s interpretation was quite correct and thanked him for withdrawing his delegation’s amendment.

42. Mr. SINGER (German Democratic Republic) said that as commercial carriers should not be involved in any form of illicit traffic, it was not enough to limit that liability to only one or two phases of such traffic, for that would weaken the provisions of article 11. His delegation therefore supported article 11 as it stood.

43. Mr. FALLER (International Civil Aviation Organization) said that the Constitution of the International Civil Aviation Organization (ICAO) (the Convention on International Civil Aviation, known as the Chicago Convention) contained a number of international air law provisions which were relevant to the control and suppression of the illicit transport of narcotic drugs and psychotropic substances by air. It was therefore within ICAO’s constitutional responsibility to take an active part in the implementation of United Nations policies and decisions concerning the suppression of illicit traffic.

44. He noted, with regard to article 11, that the ICAO Assembly had in 1986 unanimously adopted a resolution requiring Contracting States to take all reasonable measures to suppress illicit trafficking by air and to use the provisions of the annexes to the Convention in order to prevent the movement of illicit drugs by air and assist airlines in adopting effective measures to prevent aircraft equipment and facilities from being used for drug trafficking purposes.

45. During the past 20 years ICAO had taken resolute measures in response to acts of unlawful interference with international civil aviation, including the introduction of
strict security measures at airports and the screening and search of passengers, baggage and cargo. It had been generally recognized that preventive security measures had—indirectly at least—contributed to the suppression of the illicit transport of drugs by air.

46. ICAO had closely co-operated in the preparatory work connected with the drafting of article 11 and the comments of the ICAO Observer at the tenth special session of the Commission on Narcotic Drugs in February 1988 were reflected in annex III to the report of the Review Group (E/CONF.82/3, para. 54, p. 91).

47. The ICAO Council had last considered the text of article 11 in June 1988 and had instructed the Secretary-General of ICAO to state, in connection with paragraph 2, that for the past few years, the efforts of commercial carriers had been focused on deterring the illegal movement of narcotic drugs on commercial aircraft. The term "reasonable precautions" in that paragraph should not impose an excessive burden on commercial carriers and should not delay the carriage of passengers and cargo. The role of commercial air carriers should be confined to reducing illegal access to the aircraft and associated equipment. The earlier version of article 11 had contained a provision concerning penalties against the carrier, including the possibility of detention or seizure of the means of transport. It was, however, at that time clearly established that forfeiture of the means of transport required evidence that the carrier had knowledge that it was being used for illicit traffic. Furthermore, the carrier was not to be held responsible (provided, of course, that reasonable precautions had been taken) if the illicit nature of the shipment had been misrepresented by the consignor.

48. The ICAO Council did not wish to change the text of article 11, but placed on record its understanding that the operator should not be subject to any sanctions unless intent or negligence on his part or on the part of his servants or agents had been established or where it had been proved that he was an accessory to drug trafficking.

49. He drew attention to a recommendation adopted by the Third Air Transport Conference in 1985 in which the Conference strongly supported the ICAO Council on its study of the prevention and suppression of illicit drug trafficking by air, assuming thereby a role consistent with its responsibilities under the Chicago Convention and as a member of the United Nations family. It noted at the same time the need for air carriers to try to prevent, by all reasonable measures, the use of their aircraft for the smuggling of drugs as well as the need to protect air carriers against detention and seizure of the aircraft when there was no evidence of negligence or guilt.

50. Mr. SUTTER (France) said that article 11 dealt with a very difficult question. Commercial carriers must, of course, become responsible partners in the efforts being made to suppress the illicit traffic in narcotic drugs, and therefore obligations had to be imposed on them. Yet if those obligations and the sanctions applicable in the event of their breach were imposed with undue rigour, both practical and legal problems were bound to arise; so much was clear from the statement by the ICAO Observer.

51. His delegation favoured retaining the text of article 11 as it stood, since it struck a balance between conflicting requirements. However it would suggest the insertion between paragraphs 2 and 3 of a provision to the effect that a commercial carrier having its principal place of business within the territory of the Party had to take all the precautions listed, but that it would be enough for a carrier simply operating within the territory of the Party to observe the last three.

52. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that, for the reasons already given by previous speakers, his delegation was in favour of retaining article 11 as it stood.

53. The CHAIRMAN, referring to the problem raised by the term "illicit traffic", suggested that the Committee might adopt the same approach as in articles 13 and 14. In other words, if the definition of "illicit traffic" approved by Committee I was not in conformity with the Committee's interpretation of specific articles, it would have the right to revert to the matter.

54. Subject to that understanding, therefore, and if there were no further comments, he would take it that the Committee agreed to approve article 11 as it stood.

55. It was so decided.

Definition of "commercial carrier" (E/CONF.82/3/Corr.1)

56. The CHAIRMAN invited the Committee to consider the definition of "Commercial carrier".

57. Mr. van GORKOM (Netherlands), Mr. MAROTTA (Italy), Mr. HAROON PASBA (Bangladesh), Mr. SINGER (German Democratic Republic), Mr. WุSEKЕRA (Sri Lanka) and Mr. BABAYAN (Union of Soviet Socialist Republics) supported the definition proposed in document E/CONF.82/3/Corr.1.

58. Mr. ARENAL ALONSO (Mexico) suggested that the word "transportar" should be replaced by "trasladar" in the Spanish version.

59. Mr. TEWARI (India) said that his delegation agreed with the wording in document E/CONF.82/3/Corr.1, but felt that the word "benefit" should be replaced by "compensation", as he had already suggested.

60. Mrs. THISTLETHWAITE (United Kingdom) said that she did not favour that change. The term "compensation" usually meant a sum of money paid to a person to make good a loss, and its use did not seem appropriate in the present context. The term "benefit" was adequate, bearing in mind that a commercial carrier was defined as a person or entity carrying on a business for some sort of reward.

61. Mr. URETA (Argentina) supported the wording of the definition as it stood. The expression "а título onero­so" should be used in the Spanish version, since it was sufficiently broad to cover "remuneration, hire or any other benefit".
62. Mrs. LACANLALE (Philippines) said she agreed with the views expressed by the United Kingdom representative and was in favour of the text of the definition as it stood.

63. Mr. HARRISON (Australia) said that, for the reasons given by the United Kingdom representative, he wished to see the word "benefit" retained.

64. Mr. TEWARI (India) pointed out that the term "compensation" did not necessarily imply payment to make good a loss, for it could also mean remuneration for services rendered by a commercial carrier. However, if the Committee preferred the term "benefit", his delegation was prepared to withdraw its suggestion so that the proposed definition could be adopted by consensus.

65. Mr. BABAYAN (Union of Soviet Socialist Republics) noted that, particularly in Russian, the words "any person or public or private entity" could have a restrictive effect. He therefore proposed their replacement by the shorter and more comprehensive "any person or entity".

66. Mr. SUTTER (France) proposed the insertion of a reference to "mails" after the words "persons or goods". Private firms which carried mail and packets outside the rules embodied in the Conventions of UPU had expanded their activities considerably in recent years, and it would be unwise to exclude them from the category of commercial carriers.

67. Mrs. ADEGBOKUN (Nigeria) supported the amendments proposed by the USSR and French representatives.

68. Mr. URETA (Argentina) said that a more appropriate expression would be "natural or legal person", although the reference to public or private entities should also be maintained.

69. The French representative's proposal was acceptable.

70. Mr. ACUÑA (Costa Rica) suggested the use of the expression "public law or private law natural or legal person" so as to cover individuals as well as all legal entities, whether organized under public law or under private law. In many countries, such as his own, the law gave different treatment to corporate bodies or legal entities, according as they were organized under public law or under private law.

71. Mr. HARRISON (Australia) said that the definition should be quite unambiguous, and for that reason the words "public or private entity" should be retained. It was also important to state clearly that public sector carriers were covered by the convention; if they were to be excluded, most railways and airlines, which were State owned, would in fact not be covered.

72. He supported the French representative's proposal.

73. Mr. EL HENNAWY (Egypt) said his delegation preferred the original text which was more comprehensive and in line with the laws of his country.

74. He supported the French representative's proposal.

75. Mr. BABAYAN (Union of Soviet Socialist Republics) maintained that the only way of ensuring that the definition covered every possible type of person or entity would be to use the words "any person or entity".

76. Mrs. ROBERTS (Jamaica) supported the French representative's proposal. She preferred the original wording "public or private entity", but would not stand in the way of a consensus.

77. Mrs. WIJESEKERA (Sri Lanka) suggested that the words "any person or entity, public or private" might satisfy the USSR representative.

78. Referring to the French representative's proposal, he said that, if the term "goods" did not cover mails, the passage in question could be amended to read "transporting persons or goods, including mail".

79. Mr. NEGREIROS (Peru) said that the proposed definition had satisfied most delegations because it covered individuals, legal entities, public undertakings and private enterprises.

80. With regard to the French representative's proposal, he pointed out that mails could be carried either by a public or private entity, and were therefore covered by the present language.

81. Mr. SUKANDAR (Indonesia) was in favour of retaining the words "public or private" which would cover all commercially-operated carriers, whether publicly or privately owned.

82. He supported the French representative's proposal.

83. Mr. MAHASARANOND (Thailand) said that his delegation had no difficulty in accepting the proposed definition together with the changes proposed by the USSR and French representatives.

84. Mr. SIDI (Mauritania) suggested the following wording: "Commercial carrier means any person or public or private enterprise engaged in transporting persons, goods or mails for remuneration".

85. Mrs. TESSEMA (Kenya) said that her delegation was in favour of the definition set out in document E/CONF.82/3/Corr.1 provided it included a reference to the mails.

86. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) supported the USSR representative's proposal to replace the words "any person or public or private entity" by the words "any person or entity", which would be more effective in preventing illicit traffic in narcotic drugs and psychotropic substances.

87. Mrs. SEMICH (Algeria) said that her delegation could support the proposed definition with the addition of a reference to the mails.
88. The CHAIRMAN noted that there was general agreement to include a reference to the mails. No agreement had been reached, however, on the proposal relating to the words “any person or public or private entity”. He therefore suggested a short recess to enable the USSR and Ukrainian representatives to hold informal consultations with the authors of the definition with a view to arriving at an agreed text.

The meeting was suspended at 12.25 p.m. and resumed at 12.50 p.m.

89. The CHAIRMAN announced that the following agreed text had emerged from the informal consultations:

“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.”

90. If there were no further comments, he would take it that the Committee agreed to adopt that definition.

91. It was so decided.

The meeting rose at 1 p.m.

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4th meeting
Tuesday, 29 November 1988, at 3.20 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 11 bis

1. The CHAIRMAN invited the Committee to consider article 11 bis (E/CONF.82/3, p. 71) and drew attention to the comments thereon in annex III to the Review Group’s report (E/CONF.82/3, annex III, paras. 56-57).

2. An amendment had been submitted by Japan (E/CONF.82/C.2/L.3*).

3. Mr. SABOIA (Brazil) drew attention to the proposal he had made at the previous meeting in connection with article 11 bis; namely, that the words “narcotic drugs and psychotropic substances”, in the first and second sentences of paragraph 1, and in paragraph 2, should be replaced by “narcotic drugs, psychotropic substances and substances in Lists A and B”.

4. Mr. TANAKA (Japan) said that, although it was vital that each country should be able to adapt the labelling provisions of the new convention to its domestic situation, the present provisions of article 11 bis would be practically impossible to apply under Japanese domestic law.

5. According to normal commercial practice, cargo manifests did not indicate the name or address of the importer and exporter, and it was his delegation’s understanding that the words in paragraph 1 “the name and address of the importer, the exporter and, when available, the consignee” were to be indicated in one of the commercial documents mentioned in that paragraph.

6. With a view to introducing the necessary element of flexibility, therefore, his delegation proposed that the opening words of paragraphs 1 and 2, namely “Each Party shall require”, should be amended to read: “Each Party shall take the measures it deems appropriate to require”. That wording was similar to the beginning of article 8, paragraph 1 and superseded the wording suggested in his delegation’s amendment (E/CONF.82/C.2/L.3*).

7. Mr. SINGER (German Democratic Republic) said there was no need to extend the provisions of article 11 bis to cover substances in Lists A and B, as proposed by the Brazilian delegation. Article 8 already contained various provisions relating to substances in Lists A and B. On the other hand, no corresponding provisions were to be found in the 1961 Single Convention or the 1971 Convention on Psychotropic Substances. It was precisely in order to fill that gap that the open-ended expert group and the Review Group had drafted the provisions to be found in article 11 bis; they were intended to apply solely to narcotic drugs and psychotropic substances.

8. Mr. BABAYAN (Union of Soviet Socialist Republics) was of the view that, although article 11 bis was in general quite satisfactory, a reference to the import or export authorization should be included among the documents it listed so as to bring it into line with article 31 of the 1961 Single Convention. The provisions of the new convention should be just as strong as those of existing instruments dealing with narcotic drugs and psychotropic substances.

9. Mr. SUTTER (France) agreed that, for the reasons already given, article 11 bis should not be extended to cover substances in Lists A and B.

10. He suggested that its title should read “Labelling of shipments and accompanying documents”; the term “commercial documents” was inadequate, because the list
given in paragraph 1 included customs documents which were administrative rather than commercial documents.

11. Mr. SUKANDAR (Indonesia) said that his delegation would have no difficulty in accepting article 11 bis as it stood. It suggested, however, that a suitable company (or companies) should be designated in each State Party to act as the control for the channel of narcotic matters, including the import, export and distribution of narcotic drugs and psychotropic substances, with a view to facilitating control and thereby preventing diversion from the legal market. The names of such companies could be listed and circulated to States Parties.

12. Mr. ASAD (Pakistan) said that he fully agreed with the substance of article 11 bis, but had some reservations regarding the title. Moreover, it might be advisable to insert the words "legally authorized" before the word "exports".

13. Mr. Qi Baolin (China) said that his delegation, which could accept the text of article 11 bis, suggested that the title should read "Commercial documents and labelling", since paragraph 1 dealt with commercial documents and paragraph 2 with labelling.

14. Mr. CARBONEZ (Belgium) noted that the purpose of the last sentence of article 30, paragraph 4 of the 1961 Single Convention was to prevent easy recognition of the contents of a package containing drugs, since such recognition would facilitate theft. In the spirit of that provision, therefore, he suggested it would be undesirable to require in article 11 bis labelling which would reveal what a package contained.

15. Mr. SUTTER (France) said he understood paragraph 2 to mean that labelling was not compulsory, but that if it was required, it must be truthful and not consist of inaccurate indications.

16. He agreed with the previous speaker that care should be taken to avoid facilitating the work of thieves by means of the indications given on outer wrappings.

17. Mrs. THISTLETHWAITE (United Kingdom), speaking as a member of the informal group which had produced article 11 bis, explained that the words "are not mislabelled" in paragraph 2 had been used deliberately to indicate that each Party could itself decide whether to require labelling. The danger to which previous speakers had referred had been very much in the minds of the drafters.

18. Noting that the International Chamber of Shipping had drawn attention to the fact that the term "bills of lading" was being superseded by "transport documents", she suggested that, in paragraph 1, the words "bills of lading" should be replaced by "transport documents".

19. Mr. PASHA (Bangladesh) said that he fully agreed with the wording of article 11 bis. He suggested, however, that the words "are not mislabelled" at the end of paragraph 2 should read "should be labelled properly".

20. Mr. van GORKOM (Netherlands) agreed with the United Kingdom representative that much thought and a great deal of work had gone into the drafting of article 11 bis.

21. In his view, the Japanese amendment would unduly weaken the text, and he felt that the Japanese representative's reference to article 8, paragraph 1 in support of his reasoning was unjustified. In point of fact it was paragraph 9 of article 8 which dealt with matters similar to those covered by article 11 bis, and paragraph 9 began with the words "Each Party shall", i.e. it was mandatory in nature.

22. Mr. LeCAVALIER (Canada) agreed with the United Kingdom representative's comments. The words "not mislabelled" had been very carefully chosen so as to prevent the labelling of consignments of drugs as "inoffensive chemicals" or "reagents", and were also consistent with existing conventions.

23. His delegation, which supported article 11 bis as it stood, felt it would be weakened by the Japanese amendment.

24. Lastly, he noted that if the Committee decided to adopt the USSR representative's suggestion, care should be taken to exclude from the provision substances in Schedules III and IV of the 1971 Convention on Psychotropic Substances, since it did not require import or export authorizations for those substances.

25. Mr. ARENAL ALONSO (Mexico) pointed out that article 11 bis seemed to duplicate article 8, paragraph 9(d) in which the labelling requirements for consignments of narcotic drugs and psychotropic substances were already indicated. Moreover, article 31 of the 1961 Single Convention specified certain requirements in respect of exports of narcotic drugs which were not contemplated in article 11 bis.

26. Mrs. TESSEMA (Kenya) proposed that the title of the article should be amended to read "Commercial documents and labelling of exports", and that the word "licit" should be inserted before the word "exports" in paragraph 1.

27. Mr. KOCH (Denmark) said he found it difficult to understand the purport of article 11 bis. States Parties to the 1961 Single Convention and the 1971 Convention on Psychotropic Substances were already bound to require that each export consignment of the substances in question should be accompanied by a document containing certain indications, in particular the name of the exporter or importer. It was now suggested, in article 11 bis, that further indications, over and above those requirements were necessary. Shipping documents were read by a great many people who would become aware that a package contained drugs, and the temptation to steal its contents would increase considerably.

28. He emphasized that the wording of article 11 bis did not prevent a State Party from stipulating—as had been done in Denmark—that the outer wrapping of a package...
containing narcotic drugs or psychotropic substances must not indicate its contents. That provision had been adopted by his country a long time previously, in the spirit of article 30, paragraph 4 of the 1961 Single Convention, and the labelling requirement that would eventually be adopted should not prevent its maintenance in force.

29. Mr. STEWART (United States of America) was in favour of article 11 bis as it stood. It was an important article, which bridged the gap between the required documentation under the two existing Conventions and the other documents which often accompanied shipments and which were often used to disguise the nature of their contents.

30. He suggested that the interesting point raised by the USSR representative could be met by adding the following words at the beginning of the second sentence of paragraph 1 "In addition to the requirements for documentation under article 31 of the 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol and article 12 of the 1971 Convention on Psychotropic Substances, commercial documents such as invoices . . .". His delegation understood that certain official documents were required under the two existing Conventions but that other documents that were not required nevertheless accompanied those shipments.

31. Mr. BABAYAN (Union of Soviet Socialist Republics) said he accepted the wording suggested by the previous speaker.

32. Mr. SABOIA (Brazil) said that, in view of the comments of the representative of the German Democratic Republic and other speakers, he would not press his proposal, and was prepared to accept article 11 bis as it stood.

33. Mrs. SEMICHI (Algeria) proposed that the title should be amended to read "Labelling and accompanying documents". The second sentence of paragraph 1 would then begin with the words "Accompanying documents".

34. Mrs. THISTLETHWAITE (United Kingdom) pointed out, with reference to the Algerian representative's proposal, that very often documents did not accompany the goods transported. The general term "commercial documents" had been used precisely so as to cover not only documents which accompanied goods but also documents connected with but not accompanying goods.

35. Mr. SUTTER (France) said that the previous speaker's remarks were very pertinent. The difficulty which was raised by customs documents, and to which he had already referred, remained however.

36. Mr. CARBONEZ (Belgium) thanked the United Kingdom representative for her clarification of the final words of paragraph 2.

37. Mr. TANAKA (Japan) said that, on the understanding that the provisions of article 11 bis could be enforced by administrative measures, and that the obligations arising from them rested mainly on the exporter or the consignor, his delegation could accept article 11 bis.

38. The CHAIRMAN believed that the Japanese representative's understanding was correct.

39. Recapitulating the various amendments which had been proposed, he said that the title would read "Commercial documents and labelling of shipments".

40. In the first sentence of paragraph 1, insertion of the word "legal" before "exports" had been proposed. In the second sentence of paragraph 1, the United Kingdom representative had proposed that the words "bills of lading" should be replaced by "transport documents". It had also been proposed that that sentence should begin with the words "In addition to the requirements for documentation under article 31 of the 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol and article 12 of the 1971 Convention on Psychotropic Substances . . .".

41. With regard to paragraph 2, it was his impression that, in view of the explanation given by the United Kingdom representative for the use of "not mislabelled", that wording should be retained.

42. He felt it was his duty to inform the Committee that criminal activities connected with the labelling not only of narcotic drugs and psychotropic substances but of certain other substances as well were of great concern throughout the world. It was significant that in 1988 the World Health Assembly had adopted a resolution on the rational use of drugs, which called upon Governments to take action against the trade in and marketing and circulation of, falsely-labelled medicaments. In some cases products containing no active ingredients whatever were falsely labelled as familiar pharmaceutical preparations. The entire question should therefore be viewed in a broader context. The words "not mislabelled" would not only help the authorities in charge of the control of narcotic drugs and psychotropic substances but would also assist those responsible for public health and the control of medicaments in general.

43. Mrs. LACANLALE (Philippines) proposed that the last words of paragraph 2 should be amended to read "be not mislabelled".

44. The CHAIRMAN suggested that the Committee should adopt article 11 bis together with the amendments he had read out and the minor drafting change proposed by the Philippines representative.

45. It was so decided.

Article 9

46. The CHAIRMAN, in inviting the Committee to consider article 9, said that it had before it the basic text of that article (E/CONF.82/3, p. 69) and a text submitted by the Indian delegation (E/CONF.82/C.2/L.4). He also drew attention to the relevant comments in the basic document (ibid., annex III, paras. 51-52, p. 90).

47. Mr. URETA (Argentina) said that, as indicated previously, his delegation was prepared to agree to the
deletion of article 9, especially as the question of materials and equipment was already covered elsewhere, as in article 2, paragraphs 1(a)(ii) and 1(b) and article 3, paragraph 1(c).

48. It would not, however, stand in the way of a consensus if it was agreed to retain the article but in that case would insist on the insertion of the word “illicit” before “manufacture of narcotic drugs and psychotropic substances”.

49. Mr. ARENAL ALONSO (Mexico) suggested that thought might be given to introducing a reference to the chemical precursors, materials and equipment which could be diverted to the licit manufacture of narcotic drugs, psychotropic substances or substances in Lists A and B. The purpose would be to make it clear that the Parties should co-operate in suppressing trade not only in the materials and equipment mentioned in article 9 but also in the chemical precursors and other items he had mentioned.

50. Mr. BABAYAN (Union of Soviet Socialist Republics) felt that it would be going too far to extend the provisions of article 9 to cover precursors. The process involved several stages. In the first stage, narcotic drugs and psychotropic substances had to be monitored. The next stage entailed the monitoring of precursors which could be used for the production of narcotic drugs and psychotropic substances. The suggestion was now being made that there should be monitoring of precursors of that type of information would be very useful to the chemical precursors, materials and equipment which were used in the licit manufacture of narcotic drugs and psychotropic substances. As for substances in Lists A and B, they were precursors, and it would not be realistic to attempt to monitor them.

51. Mr. van GORKOM (Netherlands) associated himself with those remarks. The present text of article 9 was perfectly acceptable to the Netherlands delegation.

52. Mr. RAMESH (India) said that, for the reasons given by the USSR representative, his delegation would not support the inclusion of a reference to substances in Lists A and B.

53. He introduced his delegation’s text (E/CONF.82/C.2/L.4), paragraph 1 of which specified that the measures to be taken should be those deemed appropriate by the country concerned, for they would obviously vary from one country to another. That point had not been made in the original text. Paragraph 2 was self-explanatory.

54. Mr. HOURORO (Morocco) emphasized the need to specify that the article referred to the illicit trade and not merely the trade in the materials and equipment in question.

55. Mr. LECAVALIER (Canada) said that his delegation was in basic agreement with the principle underlying article 9, and supported the view expressed by the USSR representative that it would not be feasible to extend monitoring and control requirements unduly.

56. However, the text of article 9 was very broad in scope whereas the Indian text reflected a more practical approach and was in fact very closely related in its wording to article 8, paragraph 1. For those reasons, his delegation was in favour of paragraph 1 of the Indian text but not paragraph 2, since it was sufficient to specify that States should co-operate, without calling for more forms and information of uncertain value.

57. Mr. HULTSTRAND (Sweden) said that his delegation preferred paragraph 1 of the Indian text (E/CONF.82/C.2/L.4) to the basic text. Paragraph 2 seemed unnecessary, however.

58. Mrs. ADEGBOKUN (Nigeria) said that paragraph 2 of the Indian text might perhaps not be necessary but supported paragraph 1 which emphasized the prevention of diversion rather than the distinction between legitimate and illicit trade.

59. Mr. ABOU TALIB (Saudi Arabia) said that his delegation did not see any need to amend article 9, the text of which it found fully satisfactory.

60. Mr. TRINCELLITO (United States of America) expressed general support for paragraph 1 of the Indian text (E/CONF.82/C.2/L.4), which reflected a flexible approach that enabled Parties to take whatever action they deemed necessary with regard to the problem of the diversion of materials and equipment to the illicit traffic. As for paragraph 2, he suggested that it might be desirable to use different wording which was not based on the idea of notification. If the information requested was on the lines of that mentioned in article 16, paragraph 3, of the 1971 Convention on Psychotropic Substances, that article already specified the reporting of such matters as new trends. Any new requirement should therefore be couched in general terms with regard to substitution of new chemicals. That type of information would be very useful to the Board in its annual report and to Governments. Accordingly, while he could not fully support the wording of paragraph 2 he felt that a formal provision on furnishing that type of information to the Secretary-General or to the Board could in fact be very useful.

61. Mrs. THISTLETHWAITE (United Kingdom) said that her delegation could accept both the basic text and that of paragraph 1 of the Indian text. The latter, however, referred to the diversion of materials and equipment “which are generally used” for illicit production. That wording would seem to exclude from any form of control materials and equipment which were used in the licit production process. When article 9 had been drafted, however, the intention had been to make sure that manufacturers of pharmaceutical and chemical equipment and substances would, if possible, see to it that the articles they made would not in fact be used for purposes connected with the illicit manufacture of narcotic drugs or psychotropic substances. The Indian proposal, however, covered only materials and equipment “generally used for illicit production”. That approach was at variance with the intended purpose of article 9. She therefore proposed that the words “which are generally used for” should be replaced by the word “for”.

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62. Paragraph 2 of the Indian text was, in her view, redundant, since its substance was already covered by article 16 and those provisions of article 8 which set forth specific requirements in respect of substances in Lists A and B that were to be notified to the Secretary-General.

63. Mr. HARRISON (Australia) said that, although his delegation preferred paragraph 1 of the Indian text to the original text of article 9, it was not in favour of paragraph 2.

64. Mr. van GORKOM (Netherlands) said that, like other speakers, he was in general agreement with the approach adopted in paragraph 1 of the Indian text. Its wording raised difficulties, however, and he suggested that they might be overcome by replacing the text by the following:

"The Parties shall take the necessary measures they deem appropriate to prevent the diversion to illicit uses of materials and equipment which are generally used for the production, processing or manufacture of narcotic drugs and psychotropic substances and shall co-operate with each other to this end."

That wording would specify the nature of the diversion in question.

65. As to paragraph 2 of the Indian text, he agreed with previous speakers that it was not practicable and could result in a great deal of unnecessary red tape. The Committee would, in any event, take up the question of reporting when it dealt with that item under articles 15 et seq.

66. Mrs. SEMICHI (Algeria) said that her delegation could have accepted article 9 as it stood but saw merit in paragraph 1 of the Indian text, which introduced the important concept of co-operation and stressed that of diversion. Perhaps the Indian representative could adapt that paragraph to the basic text of article 9.

67. She supported the United Kingdom proposal to replace the words “which are generally used for” by “for”.

68. Mr. HOURORO (Morocco) said his delegation had no difficulty in accepting paragraph 1 of the Indian amendment but proposed that the words “diversion of material and equipment” should be amended to read “diversion or purchase of materials and equipment”.

69. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the change proposed by the United Kingdom representative and, in the same spirit, suggested that paragraph 1 of the Indian text should be reworded as follows:

“The Parties shall take the necessary measures which they deem appropriate to prevent a diversion of materials and equipment with a view to preventing their being used for illicit production or manufacture of narcotic drugs or psychotropic substances and, as appropriate, shall co-operate with each other to this end”.

70. Mr. von HENGSTENBERG (Federal Republic of Germany) said that his delegation preferred the basic text but could accept the Indian text as amended by the United Kingdom.

71. He appreciated the idea contained in paragraph 2 of the Indian text but felt that the nature of the information to be requested should be indicated. Specifically, he suggested the insertion of the words “the diversion of” after the words “has information about” in the first sentence of paragraph 2.

72. Mr. MULOPO (Zaire) said that his delegation was prepared to accept paragraph 1 of the Indian text as amended by the United Kingdom representative.

73. Mr. SUTTER (France) suggested the following wording, which incorporated the idea underlying the Indian text, the United Kingdom amendment and various other improvements which had been suggested:

“The Parties shall take the necessary measures that they deem appropriate to prevent diversion to illicit production of materials and equipment for the production, processing or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.”

74. Mrs. TESSEMA (Kenya) said that her delegation supported paragraph 1 of the Indian text as amended by the United Kingdom representative. Paragraph 2 of the Indian text was unnecessary in her view.

75. Mr. CARBONEZ (Belgium) stressed the need to maintain a reference to “the trade in” materials and equipment, in addition to “diversion”.

76. Mr. CHEN Yinqing (China) supported paragraph 1 of the Indian text, subject to the changes proposed by the United Kingdom and USSR representatives.

77. Mr. URETA (Argentina) said that paragraph 1 of the Indian text was acceptable provided that the changes proposed by the United Kingdom, Netherlands and USSR representatives were incorporated in it. Paragraph 2 of the Indian text was unnecessary.

78. Mr. TANAKA (Japan) agreed.

79. Mr. TRINCELLITO (United States of America) said he could accept paragraph 1 of the Indian text as amended by the United Kingdom representative, and was prepared to agree to the deletion of paragraph 2.

80. Mr. WIJESEKERA (Sri Lanka) said his delegation was willing to accept either the basic text or that proposed by India. For the sake of clarity, however, the United Kingdom amendment would have to be incorporated and the words “with each other” deleted.

81. Mr. MAROTTA (Italy) said that his delegation preferred “diversion for illicit use” to “diversion to illicit production”.

82. Mrs. SEMICHI (Algeria) expressed the same preference.
83. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the Indian text as amended by the United Kingdom, French and his own delegations.

84. Mr. SARDAR MAHMOUD (Iraq) proposed the deletion of the word "necessary" before "measures".

85. Mr. WIJESEKARA (Sri Lanka) agreed with the French representative that the beginning of the Indian text should read "The Parties shall take such measures as they deem appropriate . . . ."

86. Mr. SINGER (German Democratic Republic) pointed out that, in the basic text, the only illicit activity envisaged was the illicit manufacture of narcotic drugs or psychotropic substances, whereas the Indian text referred to "illicit production, processing or manufacture". In the first place, the word "processing" should be dropped because it was covered by "manufacture". As for the word "production", his delegation assumed it was used in the meaning given to it in article 1 (Definitions) of the 1961 Single Convention, namely "the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained". He also proposed the addition of the word "cultivation" before "production or manufacture”. That addition would be in conformity with existing conventions.

87. Mr. HARRISON (Australia) said he had some difficulty with the text proposed by the French representative. The Indian text, in its original form, referred to the diversion of all materials and equipment that might be used for the illicit manufacture or production of narcotic drugs or psychotropic substances, whereas the text proposed by the French representative referred only to the diversion of materials and equipment which would be used for the manufacturing process.

88. Mr. NEGREIROS (Peru) noted that a better title should be found for article 9, since "Materials and equipment" might give the impression that the article dealt also with the materials and equipment used in the entire illicit traffic process, which included transport.

89. The CHAIRMAN said that the wording suggested by the French representative, which was an amended version of the Indian text (E/CONF.82/C.2/L.4, para. 1), would be distributed in all languages at the beginning of the next meeting.

The meeting rose at 6.30 p.m.

5th meeting
Wednesday, 30 November 1988, at 10.35 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 9 (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of article 9 and drew attention to the new formulation contained in the French amendment (E/CONF.82/C.2/L.8).

2. Mrs. THISTLETHWAITE (United Kingdom) stressed her delegation's concern at the fact that, at least in its English version, the French proposal for article 9 limited the effect of the adjective "illicit" to the "uses" of the materials and equipment in question and appeared to suggest that it was only such materials and equipment that were covered by article 9 as a whole. The discussion at the previous meeting, however, showed that the purpose of the Netherlands contribution had been to make the article cover both licit uses of the materials and equipment and illicit processing, manufacturing and production.

3. For those reasons, her delegation preferred the text proposed by India (E/CONF.82/C.2/L.4, para. 1) which suffered from no such ambiguity, on the understanding that the words "which are generally used" were deleted, as she had proposed at the previous meeting.

4. Mr. EL HENNAWY (Egypt) said that although the French proposal was to some extent acceptable, it did not meet his delegation's requirements with regard to the illicit uses of materials and equipment. Since the purpose of article 9 was to ensure that States Parties took measures to prevent the diversion to illicit ends or purposes of materials and equipment used in making drugs, the expression "illicit uses" should be replaced by "illicit purposes".

5. Mr. de SOUZA (Australia) said that he too had some difficulty with the French proposal, which could be interpreted as referring to materials and equipment normally or solely used for the production or manufacture of narcotic drugs and psychotropic substances. In fact, there were many types of materials and equipment which could be adapted and used for that purpose, and for that reason his delegation favoured the Indian text
(E/CONF.82/C.2/L.4, para. 1) as amended by the United Kingdom representative.

6. Mr. HOURORO (Morocco) associated his delegation with the observations of the three previous speakers and agreed that the word "illicit" should qualify the words "production, processing or manufacture".

7. Mr. NEGREIROS (Peru) said that, following the discussion at the previous meeting, his delegation had expected a document incorporating all the various amendments that had been proposed to article 9. In fact, what the Committee was now discussing was a French proposal which was adequate as far as it went, but incomplete.

8. That proposal would be acceptable only if it included a reference to the trade in the materials and equipment in question, for it was not sufficient to refer to their diversion. In that connection he pointed out that many types of materials and equipment, including vessels and aircraft, as well as weapons and communication devices, were used in the course of trade, and that their uncontrolled sale made the work of drug traffickers easier. Such trade could be referred to in an additional paragraph in article 9, in an entirely new article, or in the preamble to the convention.

9. The CHAIRMAN pointed out that the Committee had before it not only the French proposal but also paragraph 1 of the Indian text (E/CONF.82/C.2/L.4) as amended by the United Kingdom representative.

10. Mr. AL-DAHRI (Saudi Arabia) said his delegation could accept either of those two texts, but urged the insertion of the words "intended for" before "production". Furthermore, he proposed that the article should refer to the diversion of materials and equipment "partly or wholly to illicit ends".

11. Mr. WIJESEKERA (Sri Lanka) agreed with the United Kingdom representative that the French delegation's text was ambiguous, and suggested it might be improved by deleting the words "to illicit uses" after the word "diversion" and inserting "illicit" before "production".

12. Mr. RODRIGUEZ VARGAS (Colombia) said his delegation preferred the term "necessary measures" which was used in the Indian text, as it was stronger and more in conformity with the purpose of article 9 than the term "appropriate measures" in the French proposal.

13. The expression "materials and equipment" was inadequate since it could be interpreted as not covering certain technological equipment which could be used even with household appliances. For that reason, he suggested that the words "materials and equipment" should be replaced by "materials, equipment and other means".

14. Mr. AGUILAR (Bolivia) said that his delegation would have preferred the basic text of article 9 but recognized that the Indian text, with the United Kingdom amendment, adequately reflected the previous meeting's discussion. It strongly supported the incorporation of a reference to illicit trade, as proposed by the Peruvian representative.

15. He accordingly proposed that article 9 should be reworded as follows:

"The Parties shall take the measures that they deem appropriate to prevent the illicit diversion or use of materials, equipment or other means intended for the production, processing and/or manufacture of narcotic drugs and psychotropic substances and shall co-operate with each other to this end."

16. Mr. BABAYAN (Union of Soviet Socialist Republics) emphasized that the sole purpose of article 9 was to prevent the use of certain technical materials and equipment for the illicit production of narcotic drugs and psychotropic substances. His delegation therefore strongly opposed the suggestion that its scope should be extended to include control over ships or aircraft on the grounds that they were used in illicit traffic.

17. With regard to the text of article 9, his delegation believed that the French proposal provided a useful basis and that the changes proposed by the representative of Sri Lanka should be incorporated. The result would be the following:

"The Parties shall take the measures that they deem necessary to prevent the diversion of materials and equipment for the purpose of using such materials and equipment for the illegal production, processing or manufacture of narcotic drugs and psychotropic substances and shall co-operate with each other to this end."

That wording was very close to that of the Indian text as amended by the United Kingdom representative.

18. Mr. SIDI (Mauritania) said that the French proposal was acceptable subject to the replacement of "production, processing or manufacture" by "production, processing, manufacture or marketing".

19. Mrs. SEMICHI (Algeria) said that, on the understanding that the word "diversion" meant diversion of the use of materials and equipment originally intended for the lawful or legitimate production, processing or manufacture of, or even trade in, narcotic drugs and psychotropic substances, her delegation supported the French proposal with the changes proposed by the Sri Lankan representative.

20. Mr. SIBLESZ (Netherlands) said that, like other speakers, he strongly opposed the efforts apparently being made to extend the scope of article 9.

21. He felt that the difficulty being encountered with the concept of diversion might be overcome if States Parties were allowed some leeway in deciding what measures they deemed appropriate. He therefore suggested the following wording:

"The Parties shall take such measures as they deem appropriate to suppress trade in materials and equipment for illicit manufacture of narcotic drugs and
psychotropic substances and shall co-operate to this end.”

22. Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that his delegation supported the French proposal as amended by the USSR and Sri Lankan representatives.

23. Mr. de SOUZA (Australia) wholeheartedly supported the views expressed by the USSR and the Netherlands representatives concerning attempts to widen the scope of article 9.

24. His objections to the French proposal had been removed by the changes proposed by the USSR and Sri Lankan representatives.

25. Mr. BEN SALLAH (Côte d’Ivoire) drew attention to a discrepancy between the title and the wording of the article in the Indian text and stressed the need to specify that the diversion referred to was a diversion “for illicit purposes”.

26. Like previous speakers he considered that the text proposed by the French delegation could be accepted with a few amendments, such as the introduction of the word “illicit” before “production”.

27. Mr. BUTKE (Federal Republic of Germany) emphasized that article 9 should be confined to its original purpose since any attempt to extend its scope to cover other activities, such as marketing, would result in imposing on the Parties obligations that would not be at all clear.

28. He expressed strong support for the wording suggested by the Netherlands representative.

29. Mr. KOCH (Denmark) supported the remarks made by the representatives of the Federal Republic of Germany and the Netherlands.

30. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) said that the provisions of article 9 should be very specific and aimed at preventing the use of the materials and equipment in question for the illicit production or manufacture of narcotic drugs and psychotropic substances. His delegation accordingly supported the French proposal as amended by the Sri Lankan and USSR representatives.

31. Mr. ACÚNA (Costa Rica) wholeheartedly supported the Colombian representative’s proposal to replace “materials and equipment” by the words “materials, equipment and other means”, which would cover all the technical means used in the illicit production of narcotic drugs and psychotropic substances.

32. It was also very important to include a reference to trade, as proposed by the Peruvian and Bolivian representatives.

33. Mr. BABAYAN (Union of Soviet Socialist Republics) stressed that matters such as the marketing and transport of narcotic drugs and psychotropic substances were dealt with in other articles and should not be introduced into article 9. His delegation therefore supported the French proposal as amended by the Sri Lankan delegation and his own.

34. Mr. ABDUL KARIM (Libyan Arab Jamahiriya) agreed with the views expressed by the previous speaker concerning the scope of article 9 and suggested the following wording:

“The Parties shall co-operate to suppress the trade in materials and equipment used in the illicit production, processing or manufacture of narcotic drugs and psychotropic substances”.

35. Mr. TRINCELLITO (United States of America) associated himself with the remarks of the USSR representative and said that his delegation was prepared to support the French proposal provided it was amended in the manner suggested by the representatives of the USSR and Sri Lanka.

36. Mr. NEGREIROS (Peru) said that, if a genuine effort was to be made to combat illicit traffic in its entirety, certain key factors or elements could not be disregarded. There was no denying the fact that advanced technical equipment, such as weapons, aircraft and sophisticated communication devices, was being used to facilitate the drug traffic in certain countries and yet the proposal to include in article 9 a reference to trade in materials and equipment diverted into illicit channels had been opposed by certain delegations.

37. The only formulation of article 9 acceptable to his delegation would be one that contained a reference to trade and embodied the wording “materials, equipment or other means”.

38. The CHAIRMAN noted that in many countries it was known that equipment used in the pharmaceutical industry was being diverted to the illicit manufacture of drugs and that initially it had been thought that control could be imposed over trade in such equipment. However, in view of the huge quantities involved, it was found impossible to introduce a form of control similar to that for narcotic drugs. The original purpose of article 9 had therefore been to promote co-operation between the Parties in the monitoring, follow-up and regulation of trade in the equipment in question so as to prevent its use in the illicit manufacture of narcotic drugs and psychotropic substances.

39. Some representatives now wanted article 9 to cover a broader range of illicit activities in which equipment such as computers and aircraft were used. But if that approach were adopted it would be necessary to review all the other articles in order to avoid duplication. And in any case, broadening the scope of article 9 would weaken the other articles affected.

40. Mr. AGUILAR (Bolivia) proposed that the basic text of article 9 should be retained with the inclusion of a reference to trade. The suggestion to introduce the trade concept was not new, for the basic text began with the
words "The Parties shall co-operate to suppress trade in materials...". It went without saying, of course, that the reference was to illicit trade.

41. Referring to the proposal to use the wording "materials, equipment and other means", he pointed out that the discussion at the previous meeting had revealed the need to differentiate between control over materials and equipment and control over the drugs produced with such equipment and materials. In that connection, he noted that recent United States legislation provided for swingeing penalties for the diversion of articles such as glassware to illicit channels for use in the production of narcotic drugs and psychotropic substances.

42. Mr. SUTTER (France) said that even if the original purpose of article 9 was adhered to, the adoption of concrete measures to prevent diversion was bound to prove extremely difficult in view of the diversity of the materials involved. And it would be totally impossible to devise measures to prevent the diversion into illicit channels of the ships, aircraft and motor vehicles—and no doubt even suitcases and shoes—which were commonly used to conceal drugs and which it was now proposed should be covered by that article.

43. For those reasons, the scope of article 9 should not be extended and other matters, such as those relating to trade, should be dealt with in other articles.

44. Mr. HULTSTRAND (Sweden) wholeheartedly supported the French proposal as amended by the Sri Lankan representative.

45. Mrs. OGUT (Turkey) supported the French proposal together with the amendments proposed by the Sri Lankan and USSR representatives.

46. Mrs. TESSEMA (Kenya) said that her delegation opposed the idea of extending the scope of article 9 to include marketing.

47. Mr. PARAN (Israel) suggested the following slightly modified version of the basic text, which took into account some of the amendments that had been proposed:

"The Parties shall co-operate in ways they deem appropriate to suppress trade in, and the use of materials and equipment for the illicit activities of processing, manufacturing or production of narcotic drugs and psychotropic substances."

48. Mr. RODRIGUEZ VARGAS (Colombia) stressed that the basic text proposed by the Review Group stated that "The Parties shall co-operate to suppress trade in materials...". By making that clear reference to trade, the Review Group had acted in the same spirit as the Commission on Narcotic Drugs.

49. He also emphasized that the proposal to use the words "materials, equipment or other means" did not reflect any intention to institute control over every possible means. It would be for each State Party to decide what measures were to be taken and the result would certainly not be the form of absolute control suggested by some speakers during the discussion.

50. Mr. BABAYAN (Union of Soviet Socialist Republics) said it was apparent that there were two major aspects to the prevention of the use of narcotic drugs for illicit purposes. The first, which was dealt with in articles 8, 9 and a number of others, involved the surveillance, monitoring and suppression of the production of those substances. The second, which was the subject of articles 7, 11 and 12 for example, involved preventing the diversion of existing narcotic drugs and psychotropic substances into illegal channels. Those articles called upon States Parties to monitor illicit diversions of those substances by air or by sea. Article 9, however, concentrated on one small area, namely preventing the possibility of the misuse of materials and equipment normally used for the production of the substances in question, and in his view that could best be achieved by the wording embodied in the French proposal as amended by the Sri Lankan representative.

51. Mr. TRINCELLITO (United States of America) said he appreciated the need to deal effectively with instrumentalties and other means involved in drug trafficking, and recognized the important role played by ships and aircraft, for example, in that respect. However, the task of drafting provisions—especially in the context of article 3—covering such instrumentalties had been assigned to Committee I. He therefore wholeheartedly supported the Bolivian, Peruvian and other representatives in urging the Chairman, when he reported back on article 9, to make it clear that it had been drafted within the very narrow mandate given to Committee II, and therefore did not deal with issues raised by drug trafficking instrumentalties such as ships and aircraft. A report on those lines would allay concern that the problems in question might be ignored and would provide the assurance that they would be dealt with forcefully but not necessarily under article 9.

52. Mr. WIJESEKERA (Sri Lanka) opposed broadening the coverage of article 9 and supported the proposals of the USSR and United States representatives.

53. Mr. OSEI (Ghana) said it was significant that the original text of article 9 stated that the Parties must co-operate "to suppress trade" in the materials and equipment in question, and he therefore appealed to the French representative to introduce that idea into his proposed text which might then read:

"The Parties shall take the measures that they deem appropriate to prevent diversion into illicit uses of materials and equipment traded in for the manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end."

54. Mr. NEGREIROS (Peru) also emphasized that the text prepared by the Review Group contained a reference to trade in the materials and equipment in question. There was no intention on the part of his delegation, or the others supporting it, to interfere with trade in articles of common use; they simply wanted to prevent the misuse of certain materials and equipment for illicit purposes.
55. He suggested, in view of the deadlock that had been reached, that the Chairman should hold consultations with interested delegations with a view to arriving at generally-acceptable wording.

56. Mr. LeCAVALIER (Canada) agreed that article 9 should not be expanded to cover issues which were dealt with elsewhere in the draft convention.

57. He supported the French proposal as amended by the Sri Lankan representative.

58. Mr. MAROTTA (Italy) proposed the establishment of a working group to prepare a revised text of article 9. In that connection he suggested wording on the following lines:

"The Parties shall take such measures as they deem appropriate to prevent the trade in materials and equipment that can be used in the chemical production process of narcotic drugs and psychotropic substances from being conducted for illicit purposes, and shall co-operate to this end."

59. The CHAIRMAN thanked the Italian and Peruvian representatives for their proposals on how the deadlock could be broken. He suggested that consultations should be held immediately and that they should centre on the French proposal (E/CONF.82/C.2/L.8), the Indian proposal (E/CONF.82/C.2/L.4, para. 1) and the Review Group’s text (E/CONF.82/3, p. 69).

The meeting rose at 12.25 p.m.

6th meeting

Wednesday, 30 November 1988, at 3.35 p.m.

Chairman: Mr. BAYER (Hungary)

later: Mr. van GORKOM (Netherlands)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 9 (concluded)

1. Mr. MULOPO (Zaire) said that the proposal made by the Italian representative seemed to have produced a consensus, provided only that the word “chemical” should be eliminated. His delegation therefore proposed the following wording: “The Parties shall take the measures that they deem appropriate to prevent trade in materials and equipment from being used for any process for the illicit production or manufacture of narcotic drugs or psychotropic substances, and they shall co-operate to this end.”

2. Mr. SIDI (Mauritania) said that the Italian representative’s proposal somewhat restricted the scope of action in that it focused on chemical processes, and his delegation therefore supported the proposal of the Zairian representative.

3. Mr. van Gorkom took the Chair.

4. Mr. SINGER (German Democratic Republic) said that his delegation considered that the main purpose of article 9 was to curb the main sources of narcotic drugs and psychotropic substances by making specific materials and equipment unavailable. As adopted by the Commission on Narcotic Drugs at its tenth special session, article 9 contained the phrase, “materials and equipment for illicit manufacture ...”. In the present versions, the corresponding phrase was supplemented by other words, such as “production” and “processing”. That wording was not in line with the existing Conventions, which the draft convention under consideration was intended to supplement. All terms used in the new convention must have meanings as defined in the existing Conventions, unless newly defined by the new convention. Specifically, the term “manufacture” fully covered the concept of processing. The term “production” was defined very specifically in article 1 of the Single Convention. In the light of that definition, which covered activities that did not require the use of any substance or of more than the simplest devices, it would not appear necessary to include production in article 9. On the other hand, cultivation processes involved much more use of materials and equipment. To solve that problem, article 9 might be restricted to illicit manufacture and the relevant phrase could be worded: “materials and equipment for the illicit manufacture of ...”, in line with the draft article adopted by the Commission. A second possibility would be to draft article 9 in such a way that it covered all the activities by which narcotic drugs and psychotropic substances were obtained, in which case the relevant phrase would read: “materials and equipment for illicit cultivation, production and manufacture of narcotic drugs and psychotropic substances ...”. The third possibility would be to include some other terms such as “processing”, “preparation” and “extraction”, which were also terms used in the Single Convention. His delegation would, however, prefer the first or second option.
5. Mr. TRINCELLITO (United States of America) said that a consensus appeared to be emerging on the proposal of France, as amended by the representatives of the USSR and Sri Lanka.

6. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested that the word “trade” should be inserted into the amended French proposal referred to by the representative of the United States.

7. Mrs. SANTANDER DOWNING (Secretary of the Committee) read out the proposed amended wording:

“The Parties shall take the measures that they deem appropriate to prevent trade in or diversion of materials and equipment for the illicit production, processing or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end”.

8. Mrs. de la GARZA (Mexico) said that her delegation fully supported the amended text as read out by the Secretary.

9. Mr. SIDI (Mauritania) said that his delegation preferred the Italian proposal, which appeared clearer.

10. Mr. MAROTTA (Italy) said that the intent of his delegation’s proposal had been to bring together different suggestions, but in the interest of flexibility, it could join with other delegations in supporting the French proposal. However, the words “production” and “processing” might be deleted.

11. Mr. de SOUZA (Australia) said that his delegation could support the proposed wording read out by the Secretary, but he agreed that use of the three words “production”, “processing” and “manufacture” needed to be looked at and a consensus reached.

12. Mr. BABAYAN (Union of Soviet Socialist Republics) said that in his view all three words should be retained because they ensured that the full range of possibilities were covered.

13. Mr. SAVOV (Bulgaria) said that his delegation could fully support the text that had been read out by the Secretary.

14. Mr. MULOPO (Zaire) said that in the interest of consensus, his delegation could agree to the text read out by the Secretary.

15. Mr. Bayer resumed the Chair.

16. The CHAIRMAN said that it was his understanding that there was consensus on the amended wording of article 9 that had been read out by the Secretary.

17. Article 9, as amended, was approved.

Article 7

18. Mrs. de la GARZA (Mexico), introducing the amendment to article 7 contained in document E/CONF.82/C.2/L.6, said that the co-sponsors considered that controlled delivery should be used at the discretion of each Party, and a text establishing a mandatory responsibility for all States should be avoided. The sponsors were not opposed to the use of controlled delivery per se. Where national legislation provided for its use, and where the technical means to use it were available, it had proved effective, but that was not the case in many countries. National legislation in some countries in fact excluded it, or at least permitted it only under exceptional circumstances.

19. Article 7 should therefore not provide for any binding commitment in respect of its use, since that would be a serious impediment to the speedy signing and ratification of the convention because it would mean that some countries would have to renounce full sovereignty over their own territories. The sponsors favoured rather the gradual development of practical means to allow a unified front to be established in the common struggle against the common enemy through a strengthening of national security and justice systems. Each country should develop the organizational and technical means to ensure a balanced form of co-operation to combat international drug trafficking. If it was to be an effective instrument, the convention must combine at least two elements, one of a realistic nature, reflecting international rules and practices currently governing the life of nations, and one of a dynamic nature which would encourage the progressive development of new forms of international co-operation. The co-sponsors of the amendment to article 7 contained in document E/CONF.82/C.2/L.6 considered that the language of that amendment had succeeded in providing for that rather delicate balance. It did not change the substance of the article, but brought it into line with present circumstances and facilitated the development of co-operation between States in future.

20. Mr. BABAYAN (Union of Soviet Socialist Republics) asked what the consequences would be of adopting the text contained in document E/CONF.82/C.2/L.6, which referred to article 1 bis, when it was not yet known what final form article 1 bis would take.

21. Furthermore, the restricting clause at the beginning of paragraph 1 of article 7 in document E/CONF.82/3 was in fact already in line with the different requirements that had been referred to by the representative of Mexico. That matter required clarification.

22. Mrs. THISTLETHWAITE (United Kingdom), introducing the amendment to article 7 contained in document E/CONF.82/C.2/L.7, said that her delegation was well aware of the concerns of many countries whose national legislative systems could not support the idea of replacement of consignments of drugs by other materials. The purpose behind the proposed clause was to act as a marker for the future. In many countries, including her own, controlled delivery was seen as a very valuable investigative technique that made it possible to trace the organizers of what were often world-wide networks of drug traffickers. That technique had been used with great success at the national level as well as internationally as a form of co-operation between customs authorities worldwide.
23. The Customs Co-operation Council had for many years been promoting the technique of controlled deliveries in which all or part of the drug had been removed, allowing the consignment to be delivered as if it contained narcotic drugs or psychotropic substances, but without the danger that, if the controlled delivery did not work, quantities of dangerous drugs might be diverted. The idea was a good one, but it could not be accommodated by the legislation of many countries. In proposing the new paragraph contained in document E/CONF.82/C.2/L.7, her delegation took the view that the convention should allow not only for what could at present be accommodated under national legislations, but also for the direction in which world legislation and jurisdiction should be going, with a view to making drug traffickers accountable for their acts, wherever they might take place in the world. While there were at present difficulties in conducting deliveries at an international level without the presence of at least some drugs, it was important to set such an approach to controlled delivery down as a goal. Therefore, the proposed amendment referred to such an approach in non-mandatory terms and made it clear that it was to be taken only when national legislation made that possible.

24. The proposed text of new paragraph 3 should also be read consequent on paragraphs 1 and 2 of article 7. Decisions to substitute substances were to be made by agreement between the Parties and on a case-by-case basis, so that such a decision could only be taken where permitted by domestic law.

25. With regard to the amendment contained in document E/CONF.82/C.2/L.6, she hoped that her explanations would meet the concerns that had been expressed by the representative of Mexico in introducing that amendment, which in her delegation's view very greatly weakened the text. Further permissive language was unnecessary, since it was already stated that controlled deliveries could only take place by mutual agreement and arrangement on a case-by-case basis, and in keeping with the basic principles of the respective legal systems. That proviso should take care of any constitutional difficulties.

26. With regard to the proposal contained in document E/CONF.82/C.2/L.9, her delegation could not support the idea as presented. Firstly, a central authority scheme was more consistent with the more formal types of mutual legal assistance and for that purpose the central authority was of course useful. However, article 7 was more consistently an example of the forms of co-operation that were referred to in article 6, which took account of different forms of co-operation that needed to take place more quickly and on a more informal basis and to have more direct links between competent authorities. That was by definition true of controlled delivery. Secondly, the issue of confidentiality of the information that would have to be passed to the central authority gave rise to fears. The success of a technique such as controlled delivery depended on keeping a tight rein on the information which needed to pass between authorities, and the additional feature of a central authority scheme would make the question of confidentiality much more difficult to resolve. Her delegation's third concern regarding the proposal in document E/CONF.82/C.2/L.9 referred to inserting a reference to article 1 bis before it had been finalized. If that were done, it might be necessary to revert to article 7 after the wording of article 1 bis had been approved.

27. Mr. SUTTER (France) said, with respect to the amendment contained in document E/CONF.82/C.2/L.7, that the situation regarding controlled delivery varied greatly from case to case. Quite apart from legal problems, for practical considerations, it was not always possible to substitute substances. It would not be realistic to make substitution compulsory in the convention. The matter should be left to the discretion of the Parties, which, in bilateral or multilateral negotiations or in the case of specific operations, could agree whether to substitute substances.

28. With respect to the amendment proposed by his delegation, contained in document E/CONF.82/C.2/L.9, he recalled that it was in line with the provisions of the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances and with target 18 of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control adopted by the International Conference on Drug Abuse and Illicit Trafficking.

29. Mr. SABOIA (Brazil) said that the position of his delegation with respect to article 7 was generally in agreement with that expressed by the representative of Mexico in introducing the amendment contained in document E/CONF.82/C.2/L.6. It would be difficult for his delegation to accept mandatory language with respect to controlled delivery, and in fact it would even prefer a stronger reference to the individual national legal systems through the use of the expression "when permitted by the respective national legal systems", either in article 7 itself or in the definition of the term controlled delivery.

30. As to whether article 1 bis should be mentioned in article 7, that would depend on the decision that was yet to be taken on the final drafting of article 1 bis.

31. Mr. RAMESH (India) said, with regard to the amendment contained in document E/CONF.82/C.2/L.9, that his delegation suggested that the words "which could be the national central office" should be replaced by the words "designated for the purpose". In the second sentence of the proposed amendment, his delegation thought that equal importance should be given to the source of information and it should not necessarily in all cases be limited only to the police or the Customs authorities. Therefore, the first part of the sentence should be amended to read: "This authority shall be kept informed of any controlled delivery regardless of whether the source of information is the police or the customs or any other competent authority or entity . . . .".

32. Mr. SIDI (Mauritania) said that his delegation shared the concerns expressed by the representative of India concerning sources of information. He proposed that the wording should be restricted to mentioning "other sources" because some sources might not be authorities. In
general, he considered that the text could be improved by making it more precise.

33. Mr. NOVAK (Czechoslovakia) said that the method of controlled delivery was a very good way of tracking down organized groups involved in the illicit trafficking of drugs. Therefore, the original text of article 7 was acceptable to his delegation. It could also agree to the amendment contained in document E/CONF.82/C.2/L.7.

34. Mr. van CAPELLE (Netherlands) said that his delegation favoured controlled delivery as a law-enforcement technique, and was also open to world-wide international co-operation in that respect. On the other hand, it was aware of the need for respect of the domestic law and the sovereignty of States; the provision in paragraph 2 for decisions on a case-by-case basis took that need into account, and demonstrated respect for the domestic and constitutional requirements of the different parties. It appeared to him, therefore, that that paragraph, if appropriately applied, would meet the concerns of some parties regarding their own sovereignty and respect for domestic law. Controlled delivery was so important as an investigative technique that it should be strongly reflected in the Convention, something that was achieved by the amendment contained in document E/CONF.82/C.2/L.7, which allowed countries that were not able to co-operate in respect of controlled delivery to adopt a lower threshold in order to meet Parties that were in a position to use controlled delivery as an investigative technique.

35. With regard to the suggestion of a central authority, he shared the observations made by the representative of the United Kingdom, and thought that there was much merit in the remarks made by the representative of India. Federal States or States that had a police organization that permitted them to have international contacts also at the local level as well might have difficulties with the provision regarding a central authority.

36. Mr. LeCAVALIER (Canada) said that his country believed that controlled delivery was one of the most effective investigative techniques that law-enforcement agencies had in their arsenal to combat drug-trafficking syndicates. Numerous successful controlled deliveries had been conducted throughout the world. When controlled deliveries were not undertaken, only the couriers at the bottom of the chain were apprehended, and ringleaders were untouched. If the convention was to be effective, parties should accept the principle of controlled delivery with the flexibility enshrined in paragraph 2 of the original text. Experts from numerous countries had recognized controlled delivery as an essential tool in the fight against drug trafficking. Language had been developed to accommodate a consensus. He therefore urged the countries that had expressed reservations regarding the current text of article 7 to reconsider their positions rather than weaken one of the cornerstones of the convention.

37. His delegation viewed the additional paragraph proposed in document E/CONF.82/C.2/L.7 as a useful contribution, since when circumstances were appropriate, substitution was a judicious safety measure.

38. The important principle raised by the representative of France could probably best be addressed under article 17, which dealt with co-ordination.

39. Mr. ASAD (Pakistan) said that in view of the remarks of the representatives of the USSR, Cuba and Mexico and of article 7, paragraph 2, as currently worded, the concerns expressed might be met by substitution of the word “may” for “shall” in paragraph 1, line 2. The amendment contained in document E/CONF.82/C.2/L.9 was very good. In his country controlled delivery had been used as an administrative measure, but the establishment of a national central office had been of great use in the co-ordination of controlled deliveries arranged with the authorities of other Governments. His delegation therefore supported the amendment submitted by France.

40. Drug enforcement was one of the most difficult branches of law enforcement as a whole. Controlled delivery was perhaps the most difficult area in that branch. Therefore article 7 merited very serious consideration. The amendment contained in document E/CONF.82/C.2/L.7 should be altered, because the replacement of the whole of the psychotropic substances mentioned in line 3 of the suggested new paragraph would result in totally innocuous substances being delivered at the other end, and so far as he was aware, the receipt of innocuous substances was not an offence under the law of any country. It would be difficult to enforce such a provision. The packet delivered must contain at least some proscribed substance.

41. Mr. MAROTTA (Italy) said that all delegations appeared to be in agreement. Controlled delivery was an effective technique. So far as the amendment contained in document E/CONF.82/C.2/L.7 was concerned, it was useful that, in applying the technique of controlled delivery it should be possible to undertake substitution, but that would only be possible where the legislation of the country or countries involved in the controlled delivery allowed. It would be preferable to have the content of the proposal more closely linked to paragraph 2 of the text proposed by the expert group. The reference to decisions adopted on a case-by-case basis might also refer to substitution of substances by innocuous substances.

42. His delegation shared the view reflected in the amendment proposed by France. Controlled delivery must be ensured by a national central office, which would no doubt be the central office entrusted with co-ordination referred to in article 17 of the draft convention. To avoid making the text of article 7 cumbersome, there could simply be a reference to article 7 at the end of article 17, which would then read: “... for ensuring effective co-operation under articles 6 and 7”.

43. Mr. MENDIS (Sri Lanka) said that he would appeal to the Conference seriously to consider adopting article 7 in as much as was permitted by the amendments that had been proposed. His country had drug laws that were among the most stringent in the world. Controlled delivery had been permitted even though there was no law specifically allowing for it, and it had proved effective.
Countries that had no legal provisions concerning controlled delivery should still consider accepting article 7 in principle at least for inclusion in the convention with a view to the future amendment of their national legislations.

44. With respect to the proposed amendments, his delegation was of the view that article 7, paragraph 1, in its original form was acceptable. It agreed with the amendment submitted by the Netherlands and the United Kingdom. It considered that the second sentence of the amendment submitted by France should be deleted, leaving the first sentence with the amendment proposed by the representative of India. It would then read: “With a view to the efficient co-ordination of controlled delivery operations at the national and international levels, the Parties may consider entrusting this task to a national authority designated for the purpose”.

45. Mr. ASBALI (Libyan Arab Jamahiriya) said that his delegation would like to propose an amendment to the text contained in document E/CONF.82/C.2/L.6. It agreed to the text, but, in order to strengthen it, would propose that the words “in order to detect not only the identity but also the precise place” should be inserted after the words “to allow”.

46. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the original text of article 7 was fully acceptable to his delegation. With regard to the proposed amendments, the ideas contained in the proposal put forward by the Netherlands and the United Kingdom made a substantive contribution to the original text, but the last words, referring to “innocuous substances” might give rise to different interpretations. The exact meaning of the term “innocuous” needed to be clarified before the amendment was approved. His delegation suggested that a full stop should be placed after the words “psychotropic substances” and the remainder deleted.

47. The amendment submitted by France had given rise to some difficulties. Perhaps it might be acceptable if, after the words “the Parties may”, the words “, if they feel this to be opportune,” were inserted.

48. The amendment contained in document E/CONF.82/C.2/L.6 weakened the original text. The very reference to article 1 bis was the main thing that gave rise to complications, and he suggested that it should be deleted without waiting to learn the final wording of that article. It would be sufficient to have a restricting clause referring to national legal systems.

49. Mrs. TORRES GRATEROL (Venezuela) said that she was aware that controlled delivery had produced excellent results where national legislation permitted it to be used, but her country encountered the same difficulties referred to by the representative of Mexico in introducing the amendment contained in document E/CONF.82/C.2/L.6. Because of its domestic law, her country found it difficult to approve the text as it appeared in the original document, and it therefore supported the language given in the variant: “may take the necessary measures”.

50. Mr. AGUILAR (Bolivia) said that controlled delivery was a widely used investigative and police practice for co-operative international use. It had proved its usefulness, but because of national legislation in some countries, including his own, it raised some difficulties. His delegation therefore considered that the amendment contained in document E/CONF.82/C.2/L.6 provided an excellent basis for paragraph 1 of article 7, and would be further improved by the deletion of the reference to article 1 bis proposed by the representative of the USSR. In addition, the words “or arrangements” should be deleted from the phrase “agreements or arrangements mutually consented to”, since from the technical point of view, arrangements might be understood to mean police techniques without reference to agreements or treaties entered into by Parties.

51. His delegation favoured the retention of the original language over the amended version proposed in document E/CONF.82/C.2/L.9.

52. Regarding the amendment submitted by the Netherlands and the United Kingdom, contained in document E/CONF.82/C.2/L.7, his delegation thought that the substitution of innocuous substances would create some procedural difficulties. The information would have to be forwarded to the country of transit through which the drugs were to travel. That implied security problems and might frustrate the detection of illicit traffickers. Therefore, article 7, paragraph 1, might be taken up first, then the amendment put forward by France might be considered, using as a basis the original text.

53. Mr. SAVOV (Bulgaria) said that controlled delivery provided a good basis for preventing illicit trafficking. His delegation was satisfied with the original wording of article 7 contained in document E/CONF.82/3. Since the exact content of article 1 bis was not yet known, it would be difficult to agree with the amendment contained in document E/CONF.82/C.2/L.6. His delegation did not object to replacing the word “shall” with the word “may”, since that did not imply a substantive change.

54. The amendment contained in document E/CONF.82/C.2/L.7 was on the whole good, but there were technical difficulties, and the linkages between the different bodies that were going to carry out the substitutions had to be looked at very carefully. The term “innocuous substances” should be removed.

55. The amendment contained in document E/CONF.82/C.2/L.9 raised the greatest doubts. The text was not very clear. It might be best to delete the first part of the amendment, as proposed by the representative of the USSR. It rested with each State to decide whether a central office was to be established, and an international agreement should not contain a compulsory provision in that connection. The question of collecting information was a very big one: where would the information come from and what would be done with it? In addition, the original text referred to mutually agreed arrangements. In other words, provision was made for bilateral agreement on obtaining information. His delegation therefore did not
consider that a provision of the type contained in the amendment contained in document E/CONF.82/C.2/L.9 was needed.

56. Mr. TRINECELLITO (United States of America) said that his understanding of the existing draft was there was an obligation to provide for controlled delivery only if it was consistent with the basic principles of respective national legal systems, and then only when mutually consented to by Parties. Therefore, there was no obligation that would violate basic principles of national legal systems, and there was no obligation to enter specifically into agreements on controlled delivery. He therefore did not believe that the change to “may” provided for in document E/CONF.82/C.2/L.6 was appropriate, since sufficient safeguards existed, and it would greatly reduce the effectiveness of article 7.

57. With regard to the reference to article 1 bis, most of the articles had been drafted in such a way that they were independent of one another, and any protection needed had been provided for by the reference to national legal systems and mutually consented to agreements. Therefore, no specific reference was required.

58. His delegation could support the concept of partial substitution based on the fact that it was clear that such agreements would be reached on a case-by-case basis and in those cases where substitution would not allow for prosecution of the case, the agreement would not result in it. The proposal might be altered to make reference to the concept of removal in addition to that of replacement.

59. The proposal contained in document E/CONF.82/C.2/L.9 was rather problematical for countries that did not have a single national police force and did not have a centralized system for the administration of justice. If any part of the proposal were to be included in the convention, his country would have serious problems with the second sentence, and would like to see the word “national” deleted from the first sentence, since the article only referred to international cases of controlled delivery. In sum, his delegation strongly supported the existing draft with the amendment contained in document E/CONF.82/C.2/L.7.

60. Mr. URETA (Argentina) said that his delegation could accept the initial text, since controlled delivery constituted an important weapon in the battle against illicit trafficking in narcotic drugs and was based on agreements between countries. If there was consensus, it could also go along with the wording contained in document E/CONF.82/C.2/L.6, but without any reference to article 1 bis.

61. With respect to the amendment contained in document E/CONF.82/C.2/L.7, the measure was a good one, but a case-by-case approach must be taken, and his delegation concurred with the representative of Bolivia. In many cases, the law-enforcement agents using the technique of controlled delivery might be jeopardized.

62. With respect to the amendment contained in document E/CONF.82/C.2/L.9, controlled delivery as a police technique should ensure the greatest security of information obtained. The establishment of a centralized office might mean that such information ceased to be confidential and the procedure could as a result fail. His delegation agreed with the representative of the United States concerning the provision for a central office, since his country also did not have a centralized police force. The amendment should therefore not be included in the convention. Each Party should be free to apply its own legislation in the matter.

63. Mrs. ADEGBOKUN (Nigeria) said that her delegation appreciated the usefulness of controlled delivery in preventing illicit trafficking and it therefore supported the inclusion of article 7 in the convention. It understood that even where national legislation had not made provision for controlled delivery, inclusion of article 7 in the convention might be a good reason for national authorities to review national legislation with a view to making such provision.

64. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) said that the provisions in article 7 were extremely important, in that they aimed at unmasking organized groups engaging in drug trafficking. The representatives of Canada and Sri Lanka had very convincingly put the case for controlled delivery. The existing text in document E/CONF.82/3 was well balanced and acceptable. Nevertheless, in a spirit of compromise, his delegation could agree to the amendment contained in document E/CONF.82/C.2/L.7, if the last three words, “by innocuous substances”, were deleted.

65. His delegation also found the amendment contained in document E/CONF.82/C.2/L.9, as amended by the representative of the USSR, acceptable.

66. His delegation had understanding for the view expressed by the representative of Mexico in introducing the amendment contained in document E/CONF.82/C.2/L.6. However, it had difficulty in supporting it because it weakened article 7. If the reference to article 1 bis were removed, it could none the less support the amendment.

67. His delegation would most like to see the original text of article 7 contained in document E/CONF.82/3 retained.

68. Mrs. de la GARZA (Mexico), replying to comments made on the amendment contained in document E/CONF.82/C.2/L.6, said that, so far as the doubts concerning the reference to article 1 bis were concerned, the statement by the representative of Brazil had been clear.

69. The fear had also been expressed that the amendment might weaken article 7. Her delegation did not agree, but thought that the amendment would rather make the wording of the article more precise. Several representatives had stated that the text of the article was in any case not intended to be obligatory. If so, it was hard to see what difficulty there might be with the use in the proposed
amendment of the word “may”. If it was to be obligatory, that was another matter, since the laws of some countries, such as her own, did not provide for the technique of controlled delivery and furthermore even specifically prohibited it. Such countries could not accept an obligation prohibited by their legislation.

70. So far as the practical difficulties referred to in her initial statement were concerned, for example, the fact that sophisticated police systems were required for application of controlled delivery, the sponsors did not oppose the use of the technique in countries that were organizationally capable of implementing it, but its implementation in countries that were not in such a position might be counterproductive.

The meeting rose at 6 p.m.

**7th meeting**

**Thursday, 1 December 1988, at 11.50 a.m.**

**Chairman:** Mr. van GORKOM (Netherlands)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 7 (continued)

1. Mr. IMPEY (Observer, Customs Co-operation Council) said that the Customs Co-operation Council (CCC) had in recent years been actively promoting the use of controlled delivery, particularly since the Legal Office of the United Nations had ruled that it was not in contradiction to article 35 of the Single Convention on Narcotic Drugs, 1961, and article 21 of the Convention on Psychotropic Substances, 1971. To promote the use of the technique, CCC had organized seminars that had brought together police and customs, with the co-operation of ICPO/Interpol. Controlled delivery was undoubtedly effective in combating drug trafficking because it enabled law enforcement authorities everywhere to identify and apprehend the principals behind the trade, and not just the couriers.

2. The new convention needed to be forceful. In that connection, CCC could fully support the existing text of article 7 as it appeared in document E/CONF.82/3. It had no objection to the inclusion of a paragraph making reference to substitution because from a customs viewpoint it was easier to carry out a surveillance operation when the drugs were already in the possession of the authorities and there was no danger of losing them, and that was a very important consideration. There were very few legislations that conferred power on law enforcement authorities to carry out controlled deliveries, but there were many administrations that did apply the technique, even in the absence of specific legislation. A provision in the convention could give those that did not do so an opportunity to start. The word “shall” in the first sentence of the existing version of article 7 was obligatory. That was as it should be, and in view of the reference to consistency with national legal systems, it would in fact be tautological to replace “shall” with “may”. CCC would prefer to see the two paragraphs of the original version of article 7 contained in document E/CONF.82/3 retained unchanged in the convention.

3. The CHAIRMAN invited the Committee to consider article 7 paragraph by paragraph.

**Paragraph 1**

4. Mr. RABAZA (Cuba), speaking as a sponsor of the amendment to paragraph 1 contained in document E/CONF.82/C.2/L.6, said that it would be very difficult to accept the first paragraph if the stress was not changed and if the concept of obligation was retained. The representative of Mexico had clearly explained the rationale for attenuating the obligatory nature of the provision, and had been supported by a number of delegations.

5. Mr. SIBLESZ (Netherlands) said that his delegation was on the whole content with the wording of the existing version of paragraph 1 contained in document E/CONF.82/3. That was because it considered controlled delivery to represent a very important and useful instrument for apprehending the ringleaders in drug trafficking.

6. In connection with some other articles, his delegation had suggested the replacement of the term “illicit traffic” by more specific wording because it considered that such an amendment was appropriate in those instances. In the case of article 7, however, it considered that the phrasing was entirely warranted.

7. Regarding the proposed amendment contained in document E/CONF.82/C.2/L.6, his delegation understood the concern that countries whose national legal systems
specifically prohibited application of controlled delivery should not be obliged to take the necessary measures. That concern was accommodated in the existing wording of paragraph 7 by the reference to the need for consistency with the basic principles of respective national legal systems. In order to give better expression to the concern, however, it might be possible to change the language of the existing opening sentence slightly to read: “Unless inconsistent with the basic principles of their respective national legal systems, the Parties shall…”. In that way, the existing mandatory language could be retained.

8. His delegation considered that the words at the end of the paragraph, following the words “with a view to” should appear either in the definition of controlled delivery or in the substantive article, but not in both. That was a matter that could probably be dealt with by the Drafting Committee.

9. Mr. SKAARSLETTE (Norway) said that, in the Nordic region, controlled delivery was often used. It would be difficult for the Norwegian authorities to accept the formulations in the proposed amendment contained in document E/CONF.82/C.2/L.6. He therefore supported what had been said on the matter by the representatives of the United Kingdom, the Netherlands and Canada, as well as the observer for CCC.

10. Mr. PASHA (Bangladesh) said that his delegation recognized the importance and effectiveness of the technique of controlled delivery. However, his country’s national laws did not as yet recognize that investigative method. The word “shall” in the existing wording of paragraph 1 implied an obligation to take certain actions in respect of controlled delivery, but there were also two qualifying clauses. In his delegation’s view, the qualifying statements rendered the word “shall” inappropriate. It therefore supported the proposed amendment contained in document E/CONF.82/C.2/L.6, which used the word “may” instead of “shall”.

11. Mrs. LACANLALÉ (Philippines) said that her delegation could agree to the original text of paragraph 1. The conditional clauses in paragraphs 1 and 2 limited the general obligation of Parties to take measures for the use of controlled delivery, and sufficiently met the concerns of delegations. However, it would propose that the words “Consistent with” should be replaced by “In accordance with”, and that the qualifying clause, “on the basis of agreements or arrangements mutually consented to” should be shifted to follow immediately on the first qualifying clause, after the word “systems”. That would place all the qualifying clauses together, and the obligation would be stated afterwards.

12. Mr. MOAYEDODDIN (Islamic Republic of Iran) supported the proposal made by the representative of the Netherlands with a view to retaining the mandatory wording of the provision while still providing safeguards for countries whose national legal systems made it difficult for them to accept mandatory controlled delivery.

13. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the amendments and sub-amendments that had been put forward were felicitous, in that they made clear that, if there was no contradiction with basic national legal systems, and where there was mutual agreement, many of the complications mentioned by other delegations were eliminated.

14. The suggestion had been made that the reference making clear the purpose of controlled delivery should be deleted either from the substantive article or from the definitions. In his view, it was essential that the concept of identifying and apprehending the persons involved in trafficking should be clearly reflected in the article. He therefore supported the wording of the restricting clauses as proposed, but he could not agree to the deletion of the last clause, starting from the words “with a view to”.

15. Mr. JUPPIN de FONDAUMIERE (Deputy Director, Division of Narcotic Drugs) recalled that, when the Committee had considered the wording of article 11, it had at the same time considered the definition of commercial carriers. Other articles that had been considered by the Committee also contained definitions which would not revert to Committee I because they were precise definitions that referred only to the articles discussed by Committee II. It would be consistent for the concept of controlled delivery to be defined only in article 7. It was up to the Committee and the Conference, in consultation with the Secretariat, to make the final decision.

16. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the definition of controlled delivery must be formulated by Committee II, since terminology was the key to article 7. That must be decided upon and followed as a principle.

17. Mrs. TESSEMA (Kenya) said that controlled delivery was not inconsistent with the national legislation of her country, which was, however, concerned about the cost and complexity of applying it. If the Committee could convince her delegation that its fears were unfounded, it would consider retention of the word “shall” in paragraph 1.

18. Mr. HOURORO (Morocco) said that his country’s national legislation did not provide for controlled delivery. His delegation took a favourable view of it, but none the less shared the concerns expressed by many delegations, and would like to see flexibility introduced into the wording of paragraph 1. It therefore supported the replacement of the word “shall” by “may”.

19. It also supported the proposal by the representative of the USSR, who had recalled that the purpose of the article was to identify and apprehend traffickers; to delete that reference from the article would substantively undermine it.

20. Mrs. XARLI (Greece) said that the useful and effective technique of controlled delivery could be used on the basis of case-by-case decisions. Her delegation’s position was therefore that article 7 could be adopted in its original wording, if the words “competent enforcement
authorities” were inserted after the words “to allow”, since several services were often involved in controlled delivery operations.

21. The mention of article 7 in article 17, as had been proposed by the representative of Italy, appeared the best solution. Her delegation had carefully studied the proposed amendments contained in documents E/CONF.82/C.2/L.6, L.7 and L.9, and had concluded that an additional paragraph would introduce an increase in complexity.

22. Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that his delegation understood that controlled delivery was one of the keys to the suppression of illicit trafficking and therefore joined those delegations which supported the original wording of the article as contained in document E/CONF.82/3, with the amendments proposed by the representative of the Soviet Union.

23. Mr. MAROTTA (Italy) said that his delegation supported the proposal by the representative of the Netherlands with regard to the initial wording, which constituted an excellent solution to the different concerns that had been formulated.

24. Mr. ABUTALIB (Saudi Arabia) said that controlled delivery was an effective technique for apprehending offenders. His delegation fully agreed to the original text of paragraph 1, so far as the substance was concerned. However, it would like the word “shall” to be replaced by the word “may” to give the article more flexibility. It supported the proposed amendment contained in document E/CONF.82/C.2/L.6, but it would like to see any reference to article 1 bis deleted unless the sponsors of the proposal insisted that it should be mentioned.

25. Mrs. de la GARZA (Mexico) said that, despite the fact that many legislations explicitly prohibited the use of controlled delivery, the insertion in the convention of provisions relating to it was being discussed. That was already evidence of flexibility. The obstacles were not merely of a legal nature; there had been two types of reason for submitting the proposed amendment. The suggestion made by the representative of the Netherlands might solve part of the problem, but the second part had to do with obstacles of an organizational nature, and with technical capability, which had to do with economic development. Many countries did not have the means to apply controlled delivery. The sponsors of the proposed amendment contained in document E/CONF.82/C.2/L.6 did not object to the use of controlled delivery when it could be properly implemented. That was not the case in countries such as those that had sponsored the proposed amendment, and so they were not in a position to negotiate as to the optional nature of the provision. Only if it was adopted in the form of an optional provision could they accept it.

26. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his country attached great importance to controlled delivery. It had already used the technique experimentally, together with other countries. The article must read in such a manner as to ensure its effectiveness. The first safeguard clause as proposed by the representative of the Netherlands, to read “Unless inconsistent with the basic principles of their respective national legal systems . . . “ was very important. If the second safeguard clause, referring to arrangements or agreements mutually consented to, was also included, countries that did not have legislation permitting use of controlled delivery would not be compelled to apply it. With the two safeguard clauses, there was no need to refer to article 1 bis, which also embodied a safeguard clause. If the reference to article 1 bis was retained, it would be necessary to wait a decision on its wording. There was a difference of opinion as to whether the word “shall” should be replaced by the word “may”. The article contained a safeguard clause that allowed Parties whose legislation did not provide for controlled delivery to refrain from applying it. Some Parties would not, then, apply it. If the word “shall” was retained, countries whose legislation did permit use of controlled delivery would be required to apply it, whereas others would not. In fact it would be better to avoid discriminating between Parties by placing them all on the same legal footing.

27. Mr. OSEI (Ghana) said that his delegation considered that the word “shall” did not detract from the permissive nature of paragraph 1, in view of the words that followed; namely, “take the necessary measures”. If measures that were considered necessary by one Party could not be resorted to by the other Party, other options were still open in terms of what were necessary measures. Thus, there was no need to replace the word “shall” with “may”. His delegation therefore favoured retaining the original formulation of the paragraph.

28. Mrs. SEMICHI (Algeria) said that the problem posed by the text contained in document E/CONF.82/C.2/L.6 was not only a legal one, but also an economic one. Her delegation thought that some of the concerns that had been expressed could be met by retaining the suggestion made by the representative of the Netherlands; namely, to amend the opening clause of the paragraph to read, “Unless inconsistent with the basic principles of their respective national legal systems, the Parties . . . “ and to insert after it the words, “within their possibilities”. The word “shall” could then be retained.

29. Mr. MULOPO (Zaire) said that controlled delivery was not only an instrument of criminal investigation that made it possible to combat all elements of organized crime, but also an instrument of international co-operation that implied that countries should make the widest possible concessions. The safeguard clauses concerning national legal systems in the version of article 7, paragraph 1, contained in document E/CONF.82/3 were adequate to make reference to article 1 bis, which in turn referred to principles of international law that pre-existed the drafting of the convention. The technique of controlled delivery might be applied in countries with limited means, and so there was the need for close co-operation and financial arrangements to enable some countries to exercise jurisdiction. His country therefore considered that the original wording of article 7 should be retained if effectiveness was to be ensured.
30. Mr. TRINCCELLITO (United States of America) said that, in paragraph 2, reference to financial arrangements had been made, whereby when a controlled delivery was going to be costly, the Parties involved might come to an agreement on sharing of costs. His delegation considered that the financial aspects should not have a bearing on the principles underlying the technique of controlled delivery. His delegation supported the wording of paragraph 1 in that sense. His delegation was generally satisfied with the wording contained in document E/CONF.82/3, but in order to meet the concerns of some delegations, the wording of paragraph 1 might be amended to read: "Unless inconsistent with the basic principles of their respective legal systems, the Parties shall take the necessary measures to allow their competent authorities to make appropriate use, on the basis of agreements or arrangements mutually consented to between the Parties concerned, of controlled delivery at the international level, with a view to...".

31. Mr. de SOUZA (Australia) said that controlled delivery was an important tool in the fight against illicit trafficking. His delegation was generally satisfied with the wording contained in document E/CONF.82/3, as amended by the proposals put forward by the representatives of the Netherlands and Algeria.

32. Mr. LEHMUS (Finland) said that his delegation considered controlled delivery to be one of the cornerstones of international law enforcement activities. It preferred the language contained in the original version. The escape clauses should make it possible to retain the word "shall". It wished to emphasize that mutual consent must be given by all the countries involved in an operation, including transit countries.

33. Mr. SUTTER (France) said that his country had agreed to the original wording of paragraph 1, but the new formulation proposed by the representative of the Netherlands represented a good compromise wording, which his delegation supported. The text read out by the representative of the United States also appeared good, and his delegation could undoubtedly support it.

34. With regard to the administrative and financial problems connected with controlled delivery referred to by some delegations, paragraph 1 should deal only with the principles underlying the technique of controlled delivery, while the purpose of paragraph 2 was to deal with practical problems of implementation of controlled delivery. In that connection, his delegation had a new wording to propose for paragraph 2: "Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration agreements on the conditions for sharing of the costs inherent in such operations and arrangements relating to the modalities for exercise of jurisdiction by the Parties concerned."

35. Mr. GUNEY (Turkey) said that controlled delivery was an effective technique for combating illicit trafficking, but his country's legislation did not as yet provide for it. None the less, his delegation did not oppose provision for the appropriate use of controlled delivery. That having been said, it preferred that the existing wording of article 7 should be reviewed, taking into account the suggestions that had been made by the representatives of the Netherlands and Algeria. His delegation suggested that the clause, "Consistent with the basic principles of their respective national legal systems" should be replaced by the wording "On the condition that it is not incompatible with the basic principles of their national legal systems", immediately followed by the existing clause, "on the basis of agreements...".

36. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) said that article 7, paragraph 1, in its existing form, with no amendment other than the replacement of the word "shall" by "may" was the most acceptable version because controlled delivery could ensure more effective identification and apprehension of traffickers. His delegation could also agree to the suggestion by the representative of the Netherlands for the replacement of the words "Consistent with..." by the words "Unless inconsistent with". However, it could not support the proposal that the clause starting "with a view to identifying persons involved in..." should be deleted, since it reflected the purpose of the article.

37. Mrs. de la GARZA (Mexico) said that she wished to draw attention to the proposal contained in the original text of article 7, bearing in mind the statement made by the representative of the United States referring to paragraph 2. Paragraph 1 was mandatory, while paragraph 2 was optional. Some of her delegation's concerns in respect of the technical and economic means required for application of controlled delivery were linked to the words "when necessary" and to the condition expressed by the reference to exercise of jurisdiction in paragraph 2. Either both paragraphs should be conditional or both should be mandatory.

The meeting rose at 1.10 p.m.
8th meeting
Thursday, 1 December 1988, at 3.35 p.m.

Chairman: Mr. van GORKOM (Netherlands)
later: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 7 (continued)

Paragraph 1 (continued)

1. Mrs. de la GARZA (Mexico) withdrew her proposal to insert the phrase “in conformity with the provisions of article 1 bis”.

2. The CHAIRMAN said that the proposed new wording for article 7, paragraph 1, which took into account the suggestions that had been made, read as follows:

“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 and apprehending persons involved in illicit traffic and to taking legal action against them.”

3. Mr. SUKANDAR (Indonesia) said that his delegation would join the consensus on article 7, but asked the Chairman for clarification of the phrase “on the basis of agreements or arrangements mutually consented to”. It was not clear whether the outcome of legal action taken against an offender was to be made available to a requesting Party. If that possibility was not covered, a specific reference to that effect should be inserted in paragraph 1.

4. The CHAIRMAN said that, in his view, the words “mutually consented to” made provision for such a possibility.

5. Mr. SIBLESZ (Netherlands) said that his delegation had reservations about the words “If permitted by”. They were used in many other articles and acted as a safeguard for national legal systems, the principles of which States were not required to sacrifice when they became Parties to the convention. Their acceptance was therefore without prejudice to the approach adopted elsewhere in the draft convention, a point he wished to see made in the report. Moreover, the words “If permitted by basic principles” should not be interpreted to mean that such principles specifically authorized a particular action. His delegation was prepared to accept the words “apprehending persons involved in illicit traffic” on the understanding that the purpose of controlled delivery was to combat illicit traffic at the higher echelons.

6. Mrs. THISTLETHWAITE (United Kingdom) said that although she did not oppose the insertion of the words “and apprehending”, she shared the Netherlands representative’s concern about the words “If permitted”, which might well imply that a State without specific legislation covering controlled delivery might be barred from using that technique. It must be stated clearly—and possibly mentioned in the report—that that was not the intention.

7. The CHAIRMAN said it was his understanding that the words in question would not prevent any Party to the convention not having specific legislation on the subject from introducing and accepting controlled delivery practices and techniques.

8. Mrs. de la GARZA (Mexico) explained that, in the interest of achieving a consensus, although controlled delivery was prohibited under Mexican legislation she would not object to its being mentioned.

9. Mr. MAROTTA (Italy) said that the words “and apprehending” implied that arrest would be automatic and would follow immediately upon identification. He would prefer either the replacement of those words by “and prosecuted” or their deletion.

10. Mrs. THISTLETHWAITE (United Kingdom) recalled that the words “to taking legal action against them” had been decided upon in the Review Group to meet the objection by some countries to the inclusion of the word “apprehending”, which was now superfluous.

11. Mr. WJEJEKERA (Sri Lanka) pointed out that the force of the word “shall” was attenuated by the phrase “on the basis of agreements or arrangements mutually consented to”. He shared the United Kingdom representative’s concern about the words “If permitted by”—and suggested their replacement by “Consistent with”.

12. Mr. RAMESH (India) proposed the replacement of the words “within their possibilities” by “to the extent possible”.

13. Mr. SIDI (Mauritania) said that, as identification, apprehension and prosecution were closely interrelated, the word “apprehending” should not be deleted.

14. Mr. SABOIA (Brazil) said he could accept the text read out by the Chairman, although he had difficulty with
the words “basic principles”. It would be hard to determine what constituted the basic principles of each national legal system, and in any event they would be defined by the State Party itself.

15. Mr. LeCAVALIER (Canada) was concerned that the words “If permitted” might be misinterpreted. However, he was prepared to accept the compromise reached if it was stated in the Committee’s report that the Chairman’s interpretation had been accepted.

16. The CHAIRMAN, referring to the Indian representative’s suggestion, said that the words “within their possibilities” reflected the wording of the Algerian proposal, namely “dans la mesure de leurs possibilités”, which was intended to meet the point raised by Mexico. The words “to the extent possible” did not mean the same thing.

17. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed with the United Kingdom representative that the words “to taking legal action against them” covered the notion of apprehension. He therefore proposed that it should be stated in the Committee’s report that those words had been agreed to on the understanding that they covered the apprehension of persons involved in illicit traffic.

18. It was so decided.

19. The CHAIRMAN took it that the Committee was prepared to approve the text of article 7, paragraph 1, he had read out, the words “and apprehending” having been deleted.

20. It was so decided.

21. Mr. Bayer (Hungary) took the Chair.

Paragraph 2

22. Mr. SUTTER (France) opposed the idea of linking the exercise of jurisdiction with financial understandings.

23. Mr. TRINCELLITO (United States of America) said that the English version was clear and accurately reflected the discussions in the Review Group on the separation of “financial arrangements” and “exercise of jurisdiction”. Possibly the French version could be brought into line with the English.

24. Mr. WIENIAWSKI (Poland) supported the text of paragraph 2 as it stood.

25. Mr. de SOUZA (Australia) supported the original wording and pointed out that the controlled delivery technique had been used successfully for years without any financial arrangements being involved.

26. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the original wording on the understanding that any arrangement relating to confiscation would cover not only the actual goods seized, but also the property, income and material goods of the criminals arrested.

27. Mr. MENDIS (Sri Lanka) suggested that the difficulty experienced by the French representative might be overcome if the text was amended to read “... may, when necessary, take into consideration understandings with respect to the exercise of jurisdiction and financial arrangements by the Parties concerned”.

28. Mr. MAROTTA (Italy) endorsed the United States representative’s view that it would be better to bring the French version into line with the English; any changes in the English version would only complicate matters.

29. Mr. BABAYAN (Union of Soviet Socialist Republics) and Mr. SUTTER (France) agreed.

30. The CHAIRMAN said he took it that the Committee was prepared to approve the English version of paragraph 2, on the understanding that the other language versions would be brought into line with it.

31. It was so decided.

Proposal to add a new paragraph 3

32. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the joint Netherlands and United Kingdom proposal to add a new paragraph 3, but suggested the deletion of the words “by innocuous substances”, which might lead to legal complications.

33. Mr. ASAD (Pakistan) said that if the drugs were replaced in whole, no evidence would remain when the seizure was eventually made. He therefore suggested deleting the words “in whole or”.

34. Mr. TRINCELLITO (United States of America), supported by Mr. BABAYAN (Union of Soviet Socialist Republics), proposed replacing the last line of the joint proposal by “replaced in whole or in part or removed in whole or in part to the extent that the Parties mutually agree to such action”. That would allow each Party to decide what action was to be taken with respect to the consignment on the basis of its own legal system.

35. Mr. MAROTTA (Italy) suggested adding the gist of the joint proposal to paragraph 2, the end of which would read “Such decisions may also provide for the replacement of the narcotic drugs or psychotropic substances intercepted in whole or in part by innocuous substances”.

36. The CHAIRMAN informed the Committee that the sponsors of the joint proposal had accepted the United States representative’s amendment.

37. Mr. de SOUZA (Australia) said he too experienced the difficulty mentioned by the Pakistani representative with respect to the United States representative’s amendment, and therefore suggested the words “intact or removed in part”.

It was so decided.

38. Mr. XU Hong (China) in principle supported the joint proposal as amended by the United States representative. He also agreed with the Italian representative's suggestion to add the words in question to paragraph 2, since decisions would have to be made on a case-by-case basis after consultation with the Parties concerned. Such decisions should take into account financial arrangements and the possibility of replacing innocuous substances.

39. As the main purpose of the paragraph was the interception of narcotic drugs during trafficking and their replacement by other substances, he suggested that a sentence should be added to the end of paragraph 2 covering the possibility of intercepting and retaining narcotic drugs and psychotropic substances from licit consignments by means of the controlled delivery technique.

40. Mr. SAVOV (Bulgaria) supported the joint proposal, which left open the possibility of partial or total replacement. He also supported the United States and USSR representatives' proposals.

41. Mr. LOPEZ (Argentina) emphasized once again that controlled delivery was a police operation, and that the replacement of drugs or psychotropic substances in whole or in part by innocuous substances must be carried out on a case-by-case basis since in some countries it might cause legal difficulties. He supported the joint proposal and agreed with the comments of the Australian and United States representatives. He suggested the following wording: "In so far as the Parties may agree, consignments subject to controlled delivery may be intercepted and allowed to continue intact or with the narcotic drugs or psychotropic substances replaced in whole or in part."

42. Mr. ASBALI (Libyan Arab Jamahiriya) said that the term "innocuous substances" was not clear, because the laws of importing and exporting countries differed. Certain substances were not considered harmful under the laws of some countries but in his—an Islamic—country, were regarded as harmful and prohibited by law.

43. Mrs. THISTLETHWAITE (United Kingdom) said that the Argentine representative's proposal might be useful. She suggested that she and the Netherlands representative should endeavour to produce a compromise text, taking into consideration as far as possible the suggestions made during the discussion.

44. Mr. BABAYAN (Union of Soviet Socialist Republics) supported that suggestion.

45. Mrs. SANTANDER-DOWNING (Secretary of the Committee) read out the following wording proposed by the Netherlands and United Kingdom representatives:

"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."

46. Mr. TRINCELLITO (United States of America) supported that wording and suggested that it should be borne in mind in any further discussion of the definition of controlled delivery, in which substances in Lists A and B appeared in square brackets.

47. The Committee approved the text of the new paragraph 3 of article 7 read out by the Secretary.

48. The CHAIRMAN drew attention to the French amendment to article 7 (E/CONF.82/C.2/L.9).

49. Mr. MAROTTA (Italy) recalled that his delegation had supported the French amendment. However, in order not to overburden the text of article 7, and in view of concern expressed about co-ordination by a central national authority, he suggested that "and 7" should be added to the end of article 17, which dealt with co-ordination.

50. Mr. SUTTER (France) said that since his amendment had given rise to difficulties for certain countries he was prepared to withdraw it provided that a reference to article 7 was added to article 17, which dealt with co-ordination.

51. Mr. de SOUZA (Australia), while having no objection to the proposal, suggested that the discussion of article 17 should be without prejudice to States that wished to maintain objections to a national authority dealing with matters relating to article 7. There were still some States that felt very real concern over security and confidentiality in connection with controlled deliveries and might wish to voice it when article 17 came up for discussion. He would not wish to think that the addition of a reference to article 7 was a foregone conclusion.

The meeting was suspended at 5.30 p.m. and resumed at 6.05 p.m.

The meeting rose at 6.20 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Organization of work

1. The CHAIRMAN informed the Committee that the General Committee had decided to transfer article 6 from Committee I to Committee II for consideration.

2. The fact that, owing to practical and financial difficulties, no summary records were being prepared for Committee II would hamper the work of the Drafting Committee and of the Rapporteur. The President had therefore ruled that the Committee should submit a more procedural report on its work and that the matter should be discussed again later if necessary once the Drafting Committee had started work. After the summary records had been prepared from the sound recordings of the Committee’s proceedings and issued—some time in February—delegations would be able to raise any points they considered necessary.

Article 1

3. The CHAIRMAN reminded the Committee that it had completed consideration of article 7 at the previous meeting, but had left the definition of “controlled delivery” in abeyance.

4. Mr. SINGER (German Democratic Republic) proposed that the definition should be limited to the technical aspects of the term and read “Controlled delivery” means the investigative technique of allowing illicit consignments of narcotic drugs and psychotropic substances to pass out, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities.” Since the substances in Lists A and B were normally used for a number of legal purposes, it would be difficult to determine whether a consignment containing such substances was illicit or not. He therefore proposed that a paragraph on the following lines should be added to article 7: “The Parties may agree that the provisions of this article can be applied to suspect consignments of substances in Lists A and B as well.”

5. Mr. SABOIA (Brazil) suggested the deletion of the words “if permitted... Party” in the last set of square brackets, since they were covered by article 7.

6. His delegation was of the view that the reference to substances in Lists A and B should remain in the definition and not be incorporated in a new paragraph, as suggested by the previous speaker. Those substances might be among the few in respect of which Brazilian legislation would allow controlled delivery, because in themselves they were not illicit and the procedure would be used to identify any diversion from an alleged destination to an illicit one.

7. Mr. BABAYAN (Union of Soviet Socialist Republics) said that while it was desirable for a definition to be succinct and clear, it should reflect the key features of the term in question in order to avoid any misunderstanding, and should therefore be related to the main purpose of the article. He therefore proposed a definition to the effect that controlled delivery was a method used by the competent authorities on the basis of an agreement with a view to the identification of criminal elements.

8. Mr. TANAKA (Japan) agreed with the representative of the German Democratic Republic. The fact that precursors such as those in Lists A and B were covered by the monitoring system described in article 8 was sufficient to prevent their diversion, and he considered that at least the reference to List B in the definition should be deleted.

9. Mr. TEWARI (India) endorsed the view that substances in Lists A and B should not be included in the definition, since they were not in themselves liable to abuse and were widely used in industry. Controlled delivery was a highly effective investigative technique for apprehending and identifying members of syndicates and big operators along with their storage places. There was no indication in the Comprehensive Multidisciplinary Outline that controlled delivery could be permitted in respect of any other items, such as substances in Lists A and B.

10. His delegation was in favour of deleting not only the words in the last set of square brackets but also those in the first and second sets of square brackets, as well as the words “out” in the fifth line and “or into” in the sixth line. It was also of the view that the definition should end with the word “authorities” in the seventh line.

11. Mr. TRINCELLITO (United States of America) agreed with the Brazilian representative that it was important to include List A and List B substances in the definition, since controlled delivery of such precursor chemicals was one of the main ways of locating illicit processing laboratories. In order to define the process itself and to take into account the USSR representative’s point on the need to include key features in the definition, he proposed the following wording:

“Controlled delivery” means the investigative technique of allowing illicit or suspect consignments to pass out, through or into the territory of one or more countries with the knowledge and under the supervision...
of their competent authorities, for the purpose of facilitating the identification of persons involved in illicit traffic".

12. Mr. XU Hong (China) considered that the definition should be as simple as possible, refer only to the investigative technique, and not duplicate what was already stated in article 7. He agreed that the words in the last set of square brackets should be deleted, but felt that the wording in the second set of brackets should be retained, although it might well be improved.

13. Mr. HOURORO (Morocco) said that controlled delivery was in itself a method of investigation, its aim and purpose being to prevent all forms of illicit traffic. Deletion of the reference to substances in Lists A and B would leave a general and vague definition, which he doubted would satisfy the Committee.

14. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the United States representative’s ideas were very close to his own and could provide a good basis for a compromise text. As it was essential that the definition should not be misinterpreted, he suggested the deletion of the word “investigative”.

15. Mr. PAYE (Senegal), noting that the Committee would shortly be discussing article 8, which invited Parties to take the measures they deemed appropriate to prevent the diversion of substances in Lists A and B, said that those substances had to be mentioned in the definition. The definition should be comprehensive as well as clear and precise.

16. Mr. SIBLESZ (Netherlands) agreed. A number of representatives had referred to article 8, but even more relevant was the relationship between the investigative technique of controlled delivery and the definition of the criminal offences covered by the convention. List A and List B substances had to be referred to, and it would be preferable to do so in the definition rather than in article 7. He also considered that the purpose of the controlled delivery technique should be mentioned; the present reference in article 7, paragraph 1, would be sufficient from the legal point of view, but the same wording should be used if it was mentioned in both the definition and the substantive article.

17. Mr. WIJESEKERA (Sri Lanka) agreed with the USSR and United States representatives that the definition should be succinct and clear; for that reason, the words in the last set of square brackets could be deleted. He also agreed with the Indian representative that substances in Lists A and B should not be included, since those in List A were used in standard therapeutic practice and those in List B in standard laboratory practice, and their inclusion might cause implementation problems.

18. Mr. SABOIA (Brazil) noted that, although the United States representative had suggested in the first part of his statement that he favoured a reference to List A and List B substances in the definition, he had not included them in his proposal because they were already mentioned in article 7. As he understood it, however, the draft wording of article 7 as approved by the Committee did not mention Lists A and B.

19. Mr. ASSADI (Islamic Republic of Iran) agreed that the definition should be clear, succinct and contain elements from the substantive text. His delegation supported the inclusion of List A and List B substances, since control measures were aimed at preventing the abuse of precursors, the movement of which had to be closely monitored.

20. Mr. SAVOV (Bulgaria) considered that if the substances in Lists A and B were mentioned in other articles, they should also be referred to in the definition; he was also of the view that the words in the last set of square brackets could be deleted. A consensus might well be achieved on the basis of the wording proposed by the United States representative, as amended by the USSR representative, and he suggested that a joint text should be drawn up.

21. Mr. TANAKA (Japan) supported the text proposed by the United States representative.

22. Mrs. SEMICHI (Algeria) opposed the deletion of the word “investigative”, since controlled delivery was in effect a form of investigation, but considered that the reference to List A and List B substances should be retained. She suggested that the words in the first set of square brackets in the definition should be retained, that the words in the second set of square brackets and the words “with the knowledge of”—which were redundant—should be deleted, and that the paragraph should end with the words “competent authorities” in the seventh line.

23. Mrs. THISTLETHWAITE (United Kingdom) expressed strong support for the wording proposed by the United States representative. The omission of a reference to substances in Lists A and B had the advantage of avoiding any conflict with the wording of article 7, paragraph 3 adopted at the previous meeting; namely, conflict between the meaning and method of controlled delivery. While her delegation thought that the purpose of controlled delivery was adequately covered in article 7, it would have no objection to its inclusion in the definition if that was important to countries for which controlled delivery was a new and untried technique. Co-operation between the Parties, as provided for in article 7, paragraph 2, was by mutual agreement and on a case-by-case basis. That would not preclude States from saying that they did not wish to include List A or List B substances. Those substances should, however, be mentioned in the substantive article, preferably in paragraph 3.

24. Mr. SIDI (Mauritania) said that the original definition of controlled delivery created no major problems for his country, although he supported the USSR representative’s proposal to delete the word “investigative”. He was also in favour of including a reference to substances in Lists A and B and of deleting the words in the last set of square brackets.

25. Mrs. CHUNG Tsu Tuan (Malaysia) favoured the inclusion of a reference to substances in Lists A and B.
26. Mrs. ADEGBOKUN (Nigeria) was in favour of the reference to substances in Lists A and B, particularly in the context of illicit consignments, since they could also be diverted to illicit uses. She agreed that the words in the last set of square brackets should be deleted.

27. Mr. WIENIAWSKI (Poland) supported the inclusion of the reference to substances in Lists A and B. The use of the controlled delivery technique on a case-by-case basis as provided in article 7, paragraph 2, would offer a safeguard for any country which might have difficulties with the technique.

28. Mr. KAYSER (Federal Republic of Germany) endorsed the United States proposal with the changes suggested by the USSR and the United Kingdom representatives, including the reference to substances in Lists A and B.

29. Mrs. TESSEMA (Kenya) supported the reference to List A and List B substances, since most narcotic drugs and psychotropic substances under control had licit uses. Her delegation also favoured retention of the word "investigative" and the deletion of the words in the last set of square brackets.

30. Mr. MOTSIK (Ukrainian Soviet Socialist Republic), while favouring a brief definition, said that it must also be comprehensive. He supported the wording proposed by the United States representative with the deletion of the word "investigative", which limited the scope of the text. He also favoured inclusion of a reference to List A and List B substances in the definition.

31. Mr. GUNBY (Turkey) said that his delegation, which considered controlled delivery to be an effective investigative technique, was of the opinion that the definition should include a reference to substances in Lists A and B. He supported the United States representative's proposal.

32. Mr. ARENAL ALONSO (Mexico) said that it would be appropriate to include the chemical precursors in Lists A and B in the definition, because they could be used in the illicit production of drugs and psychotropic substances. In the interest of conformity, it might also be advisable to include a reference to List A and List B substances in the text of article 7, paragraph 3, which had been adopted the previous day, and which referred only to narcotic drugs and psychotropic substances.

33. Mrs. XARLI (Greece) supported the inclusion of a reference to substances in Lists A and B in both the definition and article 7.

34. The CHAIRMAN invited the United States, USSR, United Kingdom and other representatives to prepare a joint text in the light of the discussion for submission to the Committee.

The meeting was suspended at 12.20 p.m. and resumed at 12.45 p.m.

35. Mrs. SANTANDER-DOWNING (Secretary of the Committee) read out the following proposed text:

"'Controlled delivery' means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in List A or List 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."

The meeting rose at 12.55 p.m.
Lists A and B would be illicit, and the words "or suspect" had been added to cover substances that might not in themselves be illicit.

3. Mr. TEWARI (India) pointed out that substances in Lists A or B would have been transported for use in illicit manufacture, which would be contrary to the laws and regulations enacted by States in pursuance of article 8. In his delegation's view they would not be authorized consignments.

4. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the proposed definition, and noted that the United Kingdom representative had clearly explained the need for using both the words in question.

5. The CHAIRMAN said he assumed that the Committee was prepared to approve the proposed definition of "controlled delivery".

6. It was so decided.

7. Mr. IMPEY (Observer, Customs Co-operation Council) welcomed the consensus decision on the definition of "controlled delivery".

Article 8

8. The CHAIRMAN said that a number of delegations had asked him to introduce the article and provide background information.

9. With regard to the reasons for the inclusion of Lists A and B in the first draft of the convention, there were two distinct classes of substance. The first resulted from a weakness in the 1971 Convention, in that it lacked the scheduling of drugs provided under the 1961 Convention. Drugs which had no pharmaceutical effects could be placed in the Schedules where there was a possibility of their being transformed into narcotic drugs. Schedule I of the 1961 Convention contained many examples, one being ecgonine, which had no pharmaceutical effects and could not be abused but was very easily transformable into cocaine; other examples were methadone and pethidine intermediates and thebaine, which were easily convertible into narcotic drugs or opiates. The lack of a comparable provision in the 1971 Convention created difficulties. There was no way of scheduling ergotamine or other ergot alkaloids, which were easily converted into (+)-lysergide (LSD), although it was essential to control such compounds. The drafter of the convention had kept the problem in mind.

10. There was, however, another class of substances—or rather organic solvents or chemical reagents—used in huge quantities in the chemical and other industries. It would be impossible to exercise narcotics-type control over tonnes of such substances, used daily in every industrialized country, that would prevent all diversion or abuse. Moreover, the specificity of such solvents was not certain. For example, acetic anhydride was the reagent generally used for converting morphone into heroin, and there were many cases where monitoring of shipments of acetic anhydride from Europe to the Middle East or Far East had led to the discovery of clandestine heroin laboratories. However, it would require an enormous administrative machinery and bureaucracy to monitor every litre of acetic anhydride used in the chemical industry, and he was not sure that that would be the answer to control. Monitoring of ether, for example, which was used in large quantities in some South American countries for producing cocaine, had been a useful police technique in detecting clandestine laboratories, but if illicit laboratories had no access to ether they could use any of dozens of other organic solvents.

11. The problem of substitution had led States to consider how to proceed. In the case of phenylpropanone, for example, one of the precursors used in the clandestine production and manufacture of methamphetamine, which was responsible for most of the current amphetamine problems throughout the world, it was interesting to compare the practice of two neighbouring countries. In France phenylpropanone had been placed under narcotics control, whereas the United Kingdom monitored shipments without placing the substance under narcotics control. Both policies could be accepted. On the one hand, control of the precursor prevented its use by clandestine laboratories. On the other hand, another compound, phenylacetic acid, used in vast quantities in the chemical industry, was very easily convertible into phenylpropanone, so that clandestine laboratories could always find a substitute and could continue to produce large quantities of methamphetamine.

12. He had gone into some detail since the examples presented would help the Committee to understand the background of the draft text now before it.

13. The essence of article 8 was well summed up in paragraph 4 which dealt with the role of the Board—how to proceed when notification was received by the Secretary-General. Two different questions arose in that connection. Where substitution was easy—in the chemical industry for example—the compound in question might be eliminated from licit production, in which case it would be less important and, with only a small quantity moving in international trade, easier to control. On the other hand, there was the problem of the use of alternative substances for illicit processing—in the case of methamphetamine, it was easy to substitute another precursor.

14. Those were complicated questions and it was not possible to suggest methods or machinery that could be applied automatically in every case. The task was a difficult and complex one, since all those factors had to be taken into account—by the Board, in making recommendations on placing substances under control or removing controls, and by the Committee, in making a decision on the lists. He believed that the lists should be flexible, and reviewed frequently in the light of technical developments. Care must be taken to keep a balance between the interests of licit manufacture and trade and the need for the most efficient methods to monitor the compounds and solvents in question and to ensure law enforcement and detection of illicit manufacture and illicit laboratories.
15. Sahibzada RAOOF ALI KHAN (President, International Narcotics Control Board) informed the Committee that the Board was prepared to assume any responsibilities under the new convention that Governments might wish to assign to it. In its recent annual reports the Board had been stressing the importance of control over-precedors and essential chemicals. As a first step, it was studying the information provided by Governments on controls already imposed. The Board had also participated in the formulation of the initial draft of article 8, in the light of the experience acquired as a result of the implementation of controls under the 1961 and 1971 Conventions by Governments and its own monitoring responsibilities under those conventions.

16. Regarding the procedure envisaged under the draft now before the Committee, the Board’s role would be similar to its current role under previous conventions, but the World Health Organization’s functions regarding drugs would be arranged by the Board itself in respect of chemicals and precursors. In deciding upon those arrangements, the Board would have available the services of special consultants with the necessary expertise, particularly in chemistry, and could consult closely with the laboratory of the Division of Narcotic Drugs. The assessments and recommendations to be made to the Commission pursuant to paragraph 4 of draft article 8 would reflect and be based on those consultations and other technical and scientific advice.

17. The CHAIRMAN said that it was most gratifying to learn that the Board was prepared to assume responsibility for the difficult task of monitoring the implementation of article 8; follow-up would be assured by the International Narcotics Control Board.

18. Mrs. de la GARZA (Mexico) withdrew Mexico’s proposed amendments to article 8 (E/CONF.82/3, pp. 111 and 112).

19. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested that the names of Lists A and B should be changed—possibly to Lists C and D. They had no particular significance and could cause confusion with lists in a number of countries; the Soviet Union, for example, had a list A for poisonous substances and a list B for strong substances.

20. He also expressed concern about the inclusion in Lists A and B of substances widely used in medical practice in combined preparations and not under control in the 1971 Convention. He was not suggesting that they should be deleted, but that the Committee should look into the matter.

21. The CHAIRMAN agreed that the inclusion in Lists A and B of substances used in medical preparations raised a real problem. Some pharmaceuticals, such as ergotamine and ephedrine, were in List A, but it was obvious that ergotamine was not listed as a pharmaceutical used for non-psychotropic purposes, but as a real precursor. During the application of the convention, the Board would have to take into account the importance of the licit use of substances, and it would undoubtedly have to consult other organizations, including the World Health Organization, on specific issues.

22. Mr. TEWARI (India), introducing his delegation’s amendments (E/CONF.82/C.2/L.5 and Corr.1), said that the chemicals and substances dealt with in article 8 were widely used industrially, and excessive restrictions on their manufacture, movement and distribution might create problems; they had to be controlled, however, to prevent their being available for illicit drug manufacture, and to that end, national measures were necessary. Article 8 provided only discretionary machinery for the implementation of its provisions at the domestic level, but detailed procedures in respect of international trade and monitoring. Unless the countries in which the substances in question were widely used for the illicit manufacture of narcotic drugs were given guidelines on how to control manufacture, transport and distribution and to ensure that such substances were available only for legitimate industrial or scientific uses, it would be impossible to ensure that they would not be available for illicit drug manufacture. The proposed new paragraph 8 bis was designed to introduce national control machinery and to harmonize national laws.

23. Mrs. ADEGBOKUN (Nigeria) said that her delegation was satisfied with article 8. Nigeria had already placed some of the substances in List A—such as ephedrine and ergotamine—under control and licence, and would have no difficulty in accepting the Indian amendment. She suggested, however, that the introductory paragraph should end with the word “licence”.

24. Mr. CHEN Yining (China), stressing the importance of article 8, said that the substances in Lists A and B were very widely used and indispensable to the chemical and pharmaceutical industries; however, monitoring and control must be strengthened because in recent years it had been found that some of them were being diverted to illegal manufacture of narcotic drugs. In other words, control measures should satisfy the needs of industrial production and international trade, but at the same time ensure that substances were not diverted to illicit use.

25. His delegation could accept the basic wording of article 8 although it felt that certain paragraphs could be amended to advantage. For example, in subparagraph 10(a) he doubted whether it was necessary for the exporting country to provide the importing country with information on every shipment of List A substances, and therefore supported the Japanese amendment (E/CONF.82/C.2/L.11).

26. The types of substances under control should be those directly related to the manufacture of drugs; that would facilitate and improve control. He agreed with those representatives who had referred to the need to strengthen the monitoring of Lists A and B.

27. His delegation considered that control measures should be based on the original strong text of article 8, although it felt there was no need to stipulate what specific national measures, such as licensing, should be adopted, since that should be left up to Governments. It
supported paragraphs 11 and 12 and took the view that recognition of the importance of the roles of the Commission and the Board would help to strengthen control at the international level.

28. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed with the Chinese representative that the original text of article 8 was sound and said he had no real difficulty with the Indian amendment.

29. Mr. DRAKAKIS (Greece), speaking on behalf of the States members of the European Economic Community, introduced the amendment in document E/CONF.82/C.2/L.12. Article 8 contained elements touching on matters which fell within the competence of the Community and consequently, as was the practice in other international forums, the observer for the Commission of the European Communities would take part in negotiations on those particular matters on behalf of the Twelve.

30. The sole purpose of the amendment was to ensure that the article would be effective in combating international trafficking in drugs and psychotropic substances and, in the present case, illicit processing or manufacture. It should provide the best possible measures to that end and establish a really efficient system for monitoring substances in Lists A and B and any others that might be added later. That system should be based on selective information, otherwise the machinery established for exchanging information would be unnecessarily burdened with irrelevant data. Since the real aim was to follow up transactions where there was reason to suspect that substances would be used for illicit processing or manufacture of drugs, the objective must be to provide information of real value to the countries needing it the most. The Twelve were ready to supply information requested by the competent authorities of other Member States on transactions in the substances in Lists A and B. The selective approach also had the advantage of confidentiality: for obvious reasons drug traffickers should not be in a position to know the exact nature of the information exchanged between interested Parties.

31. Mr. TRINCELLITO (United States of America) supported the original text of article 8, every paragraph of which reflected a compromise achieved after considerable effort. The text constituted a very real balance between the need to control and monitor the movement of chemicals used in illicit traffic and manufacture of narcotic drugs and psychotropic substances, and the need to avoid undue interference with legitimate trade in those substances.

32. In his delegation’s opinion, the amendment in document E/CONF.82/C.2/L.12 would make paragraph 10(a) virtually the same as paragraph 9(c), and thus in effect eliminate the important difference between the provisions of paragraphs 9 and 10. That would reduce the article’s effectiveness in preventing the diversion of precursors and essential chemicals and would not help the international community in combating illicit traffic. It was unfortunate that the sponsors of the amendment included a number of members of the Review Group that had helped to draft the article and achieve a compromise that had gained wide support. He hoped that the differences that had arisen since then would be resolved so that the Committee could revert to the original text.

33. Mr. BABAYAN (Union of Soviet Socialist Republics) asked the sponsors of the amendment to explain how a trade transaction could be effected if the names and addresses of the exporter and importer were not known. How were the Parties to act, in the circumstances, in the case of a suspect consignment?

34. Mr. TANAKA (Japan) appreciated the importance of monitoring precursors and stressed the need for close co-operation between exporter and importer to make article 8 effective. Since methods of monitoring differed from country to country, he suggested that the article should be discussed paragraph by paragraph.

35. Mr. ABUTALIB (Saudi Arabia) said that his delegation agreed with the objectives of article 8 but felt that some paragraphs needed clarification, especially since Lists A and B contained substances that would be used for very different purposes. In his view, the Parties to the future convention should co-operate and aim at the implementation of its provisions on the basis of the use they made of the substances. He therefore supported the Indian amendment, although, on the whole, he favoured the original text.

36. Mr. AGUILAR (Bolivia) agreed with the United States representative that the preparatory groups had produced a positive and balanced text. He stressed the vital importance of controlling essential chemicals and precursors and supported the text in its original form.

37. Mrs. TESSEMA (Kenya) asked if there was any significance in the fact that the requirement for proper documents and labelling applied only to exports under article 11 bis but applied to both imports and exports in paragraph 9(d) of article 8.

38. Mr. WIENIAWSKI (Poland) also supported the original text and felt that it should not be amended unduly. The expert group had recognized the need to strike a balance between effective control of precursors and some solvents and the need to avoid unduly hampering legitimate trade and industry.

39. Mr. ASSADI (Islamic Republic of Iran) emphasized that the provisions of article 8 should be sufficiently stringent to deter illicit drug trafficking and reduce the supply of dependence-producing drugs. His country’s experience was that precursors which were essential for drug manufacture were being easily and illegally imported from industrial European countries into countries of the Middle East and Far East, where raw materials were available for their conversion into heroin and other narcotic drugs by simple chemical processes. The control and monitoring of chemicals and precursors liable to abuse was the first step in curbing illicit production of dependence-producing substances, and his delegation supported the original text of article 8.
40. Mr. SPURGEON (United Kingdom), replying to the question put by the USSR representative, said that the words “if known” were used in the Community’s amendment to subparagraph 10(a)(i) because illicit traffickers and smugglers did not necessarily divulge their true identity.

41. Mr. BABAYAN (Union of Soviet Socialist Republics) said that that explanation confirmed his own understanding, but the proposed wording was ambiguous. The paragraph ought to cover situations in which the address was not known and indicate what should be done in that case; namely, whether the import or export operation should be allowed to proceed or not.

42. Ms. CHUNG Tsu Tuan (Malaysia) pointed out that the words “if it is suspected that the substances might be used for illicit purposes” in the amendments proposed to paragraph 10(a) by both Japan and the Community might render the paragraph inoperative, and thus make it impossible for the authorities of the exporting country, or even the exporter, to know or suspect that the substance to be exported would be used for illicit purposes. Furthermore, the addition of the words “or before its arrival at its final destination” might delay the transmission of such information to the authorities of the importing country and if the information was received only after the substance had arrived, the whole purpose of paragraph 10 would be lost. The information should be supplied to the authorities of the importing country before export, so that it could, if necessary, be monitored. The name and address of the importer was extremely important to the competent authorities of the importing country for speedy checking and follow-up purposes, and she therefore proposed that the words “if known” should be deleted.

43. Mrs. ADEGBOKUN (Nigeria) endorsed the views expressed by the Malaysian representative.

44. Mr. LeCAVALIER (Canada) requested the sponsors of the amendment in document E/CONF.82/C.2/L.12 to explain the difference between their amendment to paragraph 10(a) and what was contained in paragraph 9(c). If there were no difference between the two paragraphs he suggested that there would be no need for two lists (A and B) and reference could simply be made to “the List”.

45. Mr. ESTIEVENART (Observer, Commission of the European Communities) said that the delegations of the States members of the Community needed time for consultation before discussing that specific point.

The meeting was suspended at 5.10 p.m. and resumed at 5.55 p.m.

46. Mr. DRAKAKIS (Greece), speaking on behalf of the States members of the European Economic Community, proposed that discussion of the Community’s amendment to paragraph 10(a) should be postponed until the following meeting.

47. It was so decided.

The meeting rose at 6 p.m.

11th meeting
Monday, 5 December 1988, at 10.35 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 8 (continued)

Paragraph 10(a) (continued)

1. The CHAIRMAN reminded the Committee that at the preceding meeting the representative of Greece, speaking on behalf of the States members of the European Economic Community, had introduced the amendment proposed to paragraph 10(a) in document E/CONF.82/C.2/L.12, but had postponed a further statement on it until the present meeting.

2. Mr. DRAKAKIS (Greece), speaking on behalf of the States members of the European Economic Community, explained that they had been unable to continue discussion of article 8 at the preceding meeting because of procedural difficulties concerning their treaty obligations. It had been said at that meeting that article 8 had already been debated exhaustively in the Review Group on the draft convention; that was true, but participants, including many experts, had come to the Conference specifically to discuss the draft. The Conference was the last opportunity for debating the subject and without such debate it would be useless.

3. The members of the European Economic Community had proposed the amendment in document E/CONF.82/C.2/L.12 because of certain obligations which they bore under the Treaty of Rome and other treaties establishing the Community. The provision they proposed was not intended to protect Community interests and the Community did not intend to use it as a pretext for withholding information; its purpose was to contribute to an article that
would pave the way for a more effective system for monitoring the movement of any substance used for the illicit manufacture of drugs and psychotropic substances. The Community's main concern was the combating of illicit manufacture. Since the object of the Conference was to promote an effective instrument for that purpose, there was no point in the convention containing an article that would merely produce a great deal of international paperwork which did not serve the article's real purpose.

4. He would have preferred the Committee to discuss article 8 paragraph by paragraph, but accepted the Chairman's view that it would be more useful to start with paragraph 10 and the Community's amendment to it.

5. Mrs. THISTLETHWAITE (United Kingdom) said that her country had no wish to upset the delicate balance of the wording put forward in the basic text, but was compelled to support the Community's amendment because the existing paragraph 10(a) had serious shortcomings. First, the mandatory notification procedure took no account of the precursors and essential chemicals used to make heroin and cocaine. Secondly, by going further than was needed, it failed to concentrate on the purpose of notification, namely to locate illicit manufacture. For example, it might be necessary to notify South American and Asian countries of all imports of certain substances, whereas others currently listed were irrelevant to those countries. The main listed substances had very wide licit use, whether they were in List A or List B. To monitor precursor chemicals it would be necessary to revise the lists and channel energy into finding suspect consignments. A way forward might be to devise a system which concentrated on what was needed to identify illicit traffic and manufacture and develop a really effective intelligence system; that would be in addition to the notification procedure, which would enable the information obtained to be used effectively by the State receiving it. The Community was concerned that in many cases the listing and possible regulation of certain substances would result in illicit laboratories using alternative products which were neither monitored nor regulated.

6. The United Kingdom supported the Community amendment because it saw the need to reopen discussion on the substantive issues of what should be controlled and how best to exercise control. The contents of the lists had never been properly discussed in the open-ended intergovernmental expert group to consider the draft convention because many countries had not been represented at its meetings by experts. The present Conference offered a unique opportunity for experts to discuss the real issues involved in control and for countries to devise an effective intelligence system, something for which the existing paragraph 10(a) did not cater. She urged the Committee not to accept it as it stood.

7. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he had not received an answer to his question, namely why the sponsors of the Community countries' amendment considered that the names and addresses of the exporter and importer of suspect substances should be provided if known, but that if the importer's name was not known, nothing should be done. What would happen in that case? Would the export take place or not? The Community countries' proposal referred clearly to the exporter and the importer but said nothing about what would happen if a Party did not know where a suspect substance was going; nowhere was it made clear that such a substance should not be exported. He had heard it said that everyone wanted effective methods of control, but he questioned whether closing one's eyes in such cases met that aim. He could not understand how a suspect cargo could be allowed to leave without its destination being known.

8. Mr. TANAKA (Japan) supported the amendment proposed by the members of the European Economic Community.

9. Mr. ESTIEVENART (Commission of the European Communities) said that the main problem with paragraph 10 as it stood was its relationship to paragraph 9. Paragraph 9 established a selective system for monitoring international trade in substances in Lists A and B, including in particular the notification of the Parties concerned where there was reason to suspect the use or diversion of a substance in List A or List B for the purpose of illicit traffic; that had been found an effective and constructive response to the trafficking problem. The existing paragraph 10, however, provided for systematic control of the same substances if they were in List A.

10. If the Conference was to produce an effective convention that attacked traffickers where they operated, there was no room in the instrument for ambiguities. It should be possible to remove them from the present draft without undoing what the group of experts had already achieved. The fact that the words "when available" were in square brackets in article 8, paragraph 9(d), of the basic text suggested that the relationship between paragraphs 9 and 10 had not yet been fully worked out.

11. Mr. HOBBING (Commission of the European Communities), replying to the question raised by the Soviet representative, said that the EEC countries had proposed their amendment to paragraph 10(a)(i) in the light of the need for article 8—and the whole convention—to be an effective and practical tool. A review of export and import operations showed that in many cases the name of the importer and even the country of import was not known at the time of export. Customs experience in the Community showed that about 30 per cent of all merchandise exported from Community countries was floating merchandise—exported goods floating on the high seas, with the final buyer not yet known. If an exporting country notified such a shipment to a possible country of import prior to export, as required by the present paragraph 10(a), it might well provide incorrect information and cause confusion, since the goods in question might land up in an entirely different country. The amendment had therefore been submitted for practical reasons. Where the country of export had definite information on the country and name of the importer, notification of the export should certainly take place, as the amendment provided.
12. Mr. NAJMUD DIN (Pakistan) said that the existing text of paragraph 10(a) gave rise to three difficulties. First, it made no clear mention of precursors. Secondly, it envisaged arrangements which would produce a great deal of irrelevant paperwork. Lastly, and most important, delegations had been told before the International Conference on Drug Abuse and Illicit Trafficking that the present convention would have to be implemented within the existing United Nations budget. There were serious limitations to that budget and he could see no adequate mechanism at present in existence in the United Nations for handling the mass of paperwork that it would receive if the existing paragraph 10 was adopted. His delegation would therefore support an amendment to that paragraph provided it commanded universal support and catered for the points he had raised. The proposal made by the EEC countries might meet the case.

13. Mr. FAKHR (Islamic Republic of Iran) said that the names and addresses of the exporter and importer of any shipment must be known. The use of the words “if known” as proposed in the Community countries’ amendment could lead to the provision in paragraph 10(a) being flouted and thus play into the hands of traffickers. His delegation preferred the existing text of paragraph 10 but suggested that List B should be mentioned in it as well as List A, since List B included acetic anhydride, which was the most important chemical in heroin production and had been strictly controlled in his country since 1980.

14. Mr. LeCAVALIER (Canada) said that at the preceding meeting his delegation had asked what difference existed, with regard to List A substances, between the effect of the amendment proposed by the EEC countries to paragraph 10(a) and that of the existing text of paragraph 9(c). In his view, paragraph 9(c) clearly covered all that was proposed by the Community in document E/CONF.82/C.2/L.12. His country favoured the existing text of paragraph 10(a), which struck the proper balance between what was necessary for control and what was necessary for the pharmaceutical market and normal industrial purposes.

15. Mr. WEI (Belgium) said that the point at issue was whether compulsory systematic notification was more cost-effective in preventing illicit drug manufacture than a voluntary system where only relevant information was provided for the purpose of apprehending manufacturers of and traffickers in illicit narcotics.

16. Mr. SUKANDAR (Indonesia) said that, under the EEC countries’ amendment, the reason for supplying information to the importing country was a suspicion that substances in List A might be used for illicit purposes. His delegation was not clear as to how and on what basis such suspicion was to be established, and whether there was no need to supply the information if the authorities of the exporting country considered that there were no grounds for suspicion. His delegation preferred the existing version, which was more straightforward. It would appreciate an explanation of the reason for excluding List B from paragraph 10(a).

17. Mr. TRINCELLITO (United States of America) welcomed the comments made by the representatives of Greece and the United Kingdom and their emphasis on the need for the convention to ensure strong and effective control.

18. The discussion had strengthened his feeling that the existing wording of paragraph 10 was the best possible. He agreed with the United Kingdom representative that in some cases a country might need specific information; for example, about all shipments of a particular chemical. As he saw it, that was catered for by paragraph 10(b), which enabled Parties to adopt stricter controls than provided in paragraph 10(a). Countries could also conclude agreements for the provision of information on all shipments of a particular chemical. The aim of providing countries with relevant information would be furthered if the Committee agreed to the suggestion that a mention of List B substances should be added to paragraph 10(a).

19. Regarding subparagraph 10(a)(i), the point had been made that the possibility of exporting substances to an undeclared importer without control was one of the drug trafficker’s best friends. He therefore had serious doubts about the Community countries’ proposal which would allow the practice of shipping precursor chemicals in that way to continue.

20. There was nothing in the EEC countries’ amendment that would strengthen article 8. Their proposal would certainly weaken paragraph 10 and reduce the level of control. He therefore favoured paragraph 10(a) as it stood.

21. Mr. ASBALI (Libyan Arab Jamahiriya) said that he had great difficulty in understanding the amendment introduced by the representative of Greece on behalf of the States members of the European Economic Community. If a substance was being exported from a country, there must surely be some means of establishing the name of the importer or at least the country of destination. Such information should be compulsory.

22. Mr. BABAYAN (Union of Soviet Socialist Republics) said that for strict control it was essential to know the final destination of exports. One of the arguments advanced in favour of the Community countries’ amendment was that the final destination of a shipment was not always known—the merchandise was in the hands of a middleman until it became clear where it was going. But surely a trader could not dispatch merchandise in absolute ignorance of its destination or the source of payment. It had rightly been said that such a system was the drug trafficker’s friend. He could not accept the idea that suspect merchandise should be allowed to go to unknown destinations without a Party taking any action to control it.

23. Mr. SPURGEON (United Kingdom) said that a rearrangement of paragraphs 9 and 10, keeping firmly in mind the Community countries’ amendment, would strengthen article 8, which was of crucial importance in attacking illicit drug manufacture and supply. While the Community countries’ proposals might not reduce the paperwork which the convention would require, that paperwork would be more relevant. For example, it did
not seem sensible for the United Kingdom and other countries producing ephedrine and pseudo-ephedrine to supply notifications on every single consignment throughout the world. The United Kingdom exported and imported about 30 metric tonnes of those products annually, but it did not make sense for it to have to send notifications to countries where the manufacture of methamphetamine was not a problem. It was better to target the supply of information to those countries that really needed it, which in the present case would include predominantly the United States of America.

24. Mr. BERTSCHINGER (Switzerland) said that the problems now before the Committee had been discussed extensively during the preparation of the Single Convention and the Convention on Psychotropic Substances. Schedule I to the Single Convention already contained a number of precursor substances, so that a number of substances used in the manufacture of narcotic drugs had already been placed under international and national control.

25. He supported the amendment submitted by the United States as an important aspect of the drugs situation. States which produced and exported those substances must accept the burden that the introduction of controls and monitoring would place on licit transactions in those substances, just as the Swiss authorities received requests for the export of one of the substances in question, the list could be consulted to see if the importing firm was authorized by the country of destination. If not, the Swiss authorities immediately notified the Control Board. He suggested that paragraph 11, which provided for the annual provision of information to the Board, should be amended to provide for the immediate notification of such exports.

26. Mr. URETA (Argentina) said that his delegation could not support an amendment which weakened the paragraph and lessened international control. It therefore opposed the amendment submitted by the EEC countries and approved the text as it stood.

27. Mr. EL HENNAWY (Egypt) said that, having listened to the various opinions on the changes proposed to paragraph 10(a), his delegation preferred the original version and believed that those changes would only complicate matters without producing beneficial results. The original text was simple, did not involve additional administrative work and was in line with the domestic legislation of most States represented at the Conference.

28. Mr. PAYE (Senegal) said that the observer for the Commission of the European Communities, in replying to the Soviet representative, had indicated that the amendment was explained by the fact that for 30 per cent of exports from Community countries the exporter did not know who the final consignee was. If that was so, he suggested that paragraph 10(a)(i) should be redrafted on the following lines: "The name and address of the exporter and first importer"; and that a phrase on the following lines should be added: "and when available the name and address of the final consignee".

29. Mr. GUNEEY (Turkey) said that his delegation found it difficult to accept the proposal in document E/CONF.82/C.2/L.12. Paragraph 10 raised two questions: what was the convention seeking to control and what was the best way of exercising control? The answer to those questions pointed inevitably to effective arrangements based on the systematic control provided under the existing wording of paragraph 10. His delegation was ready to support any general agreement reached in the Committee on that matter.

30. Regarding the suggestion that List B as well as List A should be mentioned in paragraph 10, since some of the substances in List B required stricter control than others, that such addition might be appropriate for the existing text of the paragraph. However, since the lists were only tentative, they might have to be revised on the basis of objective criteria. Acetic anhydride should appear in List A and not List B.

31. Mr. LeCAVALIER (Canada) referred to the comments made by the representative of Switzerland about exports of certain substances in List A. He believed that, while some exported substances in List A might not be diverted in the first instance, they did eventually find their way to the illicit market and into the synthesis of such substances as methylenedioxyamphetamine (MDA), amphetamine, methamphetamine and LSD.

32. Mr. SABOIA (Brazil) stressed the importance of article 8. For the convention to be effective, the Conference must consider every aspect of the drugs problem and establish balanced obligations for States in co-operating to suppress illicit drug traffic. The diversion of chemical and pharmaceutical products and precursors such as those in Lists A and B was an important aspect of the drugs situation. States which produced and exported those substances must accept the burden that the introduction of controls and monitoring would place on illicit transactions in those substances, just as the States in which plants and other substances were a primary source of narcotic drugs must accept the burden of control of their normal transactions in those substances. Brazil, which produced some of those substances, had adopted a voluntary monitoring system and favoured a strong international monitoring system to prevent their diversion to illicit traffic. Article 8 as drafted by the Review Group established a monitoring system which in his opinion was satisfactory. He therefore supported the existing text of the article and opposed the introduction of wording which might weaken it.

33. Mr. TRINCELLITO (United States of America) said that some of the amendments proposed to article 8 undermined the original idea of informal controls for all the List A and List B chemicals in paragraph 9 and a more finite list of more stringent controls for those in List A in paragraph 10.
34. Mr. CARBONEZ (Belgium) said that the second statement made by the United Kingdom delegation admirably expressed his own delegation’s views.

35. Mr. FRANCFORT (France), supporting the amendment proposed by the EEC countries, said that it should be viewed in the context of paragraph 9(c), which provided for selective information. That was more useful than systematic information which, apart from its cost, might well result in national administrations being deluged with useless notifications. It could be argued that most of the precursors in List A were active principles in medical drugs, with a recognized and relatively limited commercial network. With regard to the suggestion that acetic anhydride should be transferred from List B to List A, it would hardly be realistic for trade in a substance of which hundreds or even millions of tonnes were manufactured to be subjected to systematic notification.

36. He had a strong feeling that a distinction needed to be drawn between the importer and the final consignee of a shipment. That might in part answer the Soviet representative’s question. Obviously it was not always possible to know the final consignee, and that was presumably why the words “when available” were in square brackets in paragraph 9(d).

37. He supported the two statements made by the United Kingdom delegation.

38. Mr. SINGER (German Democratic Republic) said that the observer for the Commission of the European Communities had drawn attention to the practice of exporting merchandise to importers whose name and address was unknown. He felt that, in the case of listed substances, such exports would contravene the provisions of article 8, paragraph 1, which required Parties to take measures to prevent the diversion of substances in Lists A and B for illicit purposes. Also, paragraph 10(a) required information to be supplied by the competent authorities of the exporting country to the competent authorities of the importing country, and he wondered who the competent authorities would be in the case of an unknown importer. His delegation favoured the original text of paragraph 10(a).

39. Mr. ABUTALIB (Saudi Arabia) said that his delegation regarded article 8 as possibly the most important article of the convention. Paragraph 10(a) contained a very important provision and his delegation approved it as it stood, since it established an effective control mechanism that was in line with his country’s requirements. There was no need for the paragraph to be amended or added to.

40. Mr. NICK (Yugoslavia) said that the existing text of paragraph 10 represented a reasonably good basis for establishing monitoring systems for substances in List A, and his country supported it. He pointed out that some of the requirements in article 8 might create a new non-tariff barrier in international trade in chemicals, especially since the number of substances in Lists A and B was likely to increase.

41. Mrs. ADEGBOKUN (Nigeria) supported the existing text of paragraph 10(a), which was useful and complete. The paragraph should not be amended in a manner that might weaken its impact of affect the availability of the substances in List A for the pharmaceutical trade.

42. Mr. TEWARI (India) supported the suggestion made by the representative of the Islamic Republic of Iran that the substances in List B should be mentioned in paragraph 10(a) as well as those in List A. His delegation opposed the amendment submitted by the EEC countries. The provisions of the present paragraph 10(a) did not conflict with those in paragraph 9. The addition of the words “if known” to paragraph 10(a)(i) would be inappropriate.

43. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested, as a compromise, that the Committee should approve paragraph 10 as it stood but include in it the proviso in the EEC countries’ amendment consisting of the words “if it is suspected that the substance might be used for illicit purposes”.

44. Mr. BOROVIKOV (Byelorussian Soviet Socialist Republic) said that his delegation approved the text of article 8, paragraph 10, set out in document E/CONF.82/3. It could not support the amendment submitted by the EEC countries, which would considerably weaken the monitoring of illicit traffic.

45. Mrs. ROMERO (Bolivia) approved the original text of article 8. Her country was particularly concerned about the increasing amounts of List A and B substances being smuggled into Bolivia because they contributed to the growing manufacture of controlled substances. Her delegation did not support the amendment submitted by the EEC countries because it weakened the text. Bolivia strongly wished to see certain substances already under national control, in particular those used for coca paste manufacture, included in the convention lists.

46. Mr. BOURESSLI (Kuwait) approved the existing text of paragraph 10(a). It was well drafted and served his country’s purpose.

47. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) also approved the existing text of paragraph 10(a). It provided for a strict system of control and would effectively serve the purpose of preventing illicit traffic.

48. Mr. NAJMUDDIN (Pakistan) said that his delegation’s basic objection to article 8 in its present form was that it did not cover certain precursors. Acetic anhydride, for example, was in List B and failure to monitor it effectively would seriously affect his country. The representative of the Islamic Republic of Iran had suggested that List B substances should be mentioned in paragraph 10 as well as List A substances.

49. Mrs. TESSEMA (Kenya) said that her delegation approved the original text of paragraph 10(a) and endorsed the comments made on the subject by the Nigerian delegation. The text proposed by the countries of the
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European Economic Community would be more appropriate for article 7.

50. Mr. LOUZ (Algeria) also approved the original text. His delegation could not accept the amendment proposed by the EEC countries because it would open the door to trafficking by failing to control transactions involving unknown parties.

51. The CHAIRMAN noted that a majority of delegations had spoken in favour of the wording of paragraph 10(a) put forward in document E/CONF.82/3; and that the Soviet representative had suggested accommodating the strong objections expressed to that wording by the EEC countries by adding to it the first of the three additions which they proposed in document E/CONF.82/C.2/L.2, namely the proviso "if it is suspected that the substances might be used for illicit purposes". He suggested that the Committee might wish to hold informal consultations on paragraph 10(a) with a view to producing a new text which catered for the points raised in the discussion.

52. It was so decided.

The meeting rose at 12.30 p.m.

12th meeting
Monday, 5 December 1988, at 5 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 8 (continued)

Paragraph 10(a) (continued)

1. Mr. LeCAVALIER (Canada) said that, as a result of the informal consultations which had taken place since the previous meeting, the representatives who had attended them proposed the following compromise text for article 8, paragraph 10(a):

"In addition to the requirements of paragraph 9, when requested by another Party with regard to any substance 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 importer and exporter and, when available, the consignee;"

Sub-subparagraphs (ii), (iii) and (iv) would remain unchanged and the following new sub-subparagraph would be added:

"(v) any other information which is mutually agreed upon by the Parties".

2. The CHAIRMAN suggested that the reference to List B should appear in sub-subparagraph (ii) as well. It would then be necessary to refer only to "the List" in the opening wording of paragraph 10(a), since those words would mean List A and List B. He felt that in sub-subparagraph (i) it would be more logical to mention the exporter before the importer.

3. Mr. TANAKA (Japan) said that he favoured the mention of List B.

4. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the nub of the dispute about paragraph 10(a) was the unknown consignee. He would like to know whether exporters ever shipped consignments without any idea of where or to whom they were going.

5. Mr. NAJMUDDIN (Pakistan) said that his delegation would find the compromise text acceptable if List B were mentioned in sub-subparagraph (ii).

6. Mrs. TESSEMA (Kenya) asked whether the notifications for which the compromise text provided would be made through the Secretary-General, as in the case of article 13 of the 1971 Convention on Psychotropic Substances.

7. The CHAIRMAN said that the Secretary-General was not mentioned in article 8, paragraph 10(a), of the basic text. He therefore understood that the information would be exchanged directly between Parties.

8. Mr. TRINCELLITO (United States of America) said that the notification mechanism had not been discussed in the informal consultations since they had not covered procedural issues.

9. Mr. DRAKAKIS (Greece), speaking on behalf of the States members of the European Economic Community, said that he was not yet in a position to say whether they accepted the compromise text.

10. Mrs. ADEGBOKUN (Nigeria), referring to the words "when requested", asked whether, in the absence of a request or if a request was not made at the appropriate
time, a consignment would enter a territory without notice and unmonitored. That would hardly help the suppression of illicit traffic. Developing countries did not want to find themselves suddenly faced with an illicit traffic problem which had been growing gradually without their noticing it.

11. Mr. de SOUZA (Australia) asked whether the words "each Party" in the opening sentence meant the Party requested; and whether the words "that Party" meant the Party making the request.

12. Mr. LeCAVALIER (Canada) replied in the affirmative.

13. Mr. AGUILAR (Bolivia) said that, in his delegation's opinion, making the paragraph as proposed in the basic text more flexible would remove its strength and effectiveness. In that text, produced by qualified experts, the paragraph reflected the points of view of all countries, including those affected by the presence in their territories of organized mafias which, in addition to producing and manufacturing psychotropic substances, imported chemicals by means of which narcotic alkaloids were extracted from raw materials.

14. It was disheartening that some delegations, while adopting very tough attitudes towards countries affected in that way and advocating measures to force their peasants to destroy their crops, nevertheless proposed flexible provisions for global monitoring and control of one of the most important inputs in the process of narcotics production. In his own country, importers and exporters had to obtain a licence or certificate which gave detailed information about the name of the consignee or shipper. That, he believed, was an established practice under international trade treaties.

15. His delegation considered that the text proposed in document E/CONF.82/3 was still an appropriate basis for discussion and negotiation, even though one group of countries opposed it.

16. Mr. SPURGEON (United Kingdom) said that he was very sensitive to the problems referred to by the Bolivian representative. He would like to reassure Bolivia and other countries which needed better-quality information from countries producing and exporting precursor and essential chemicals that the whole object of his country's approach to paragraph 10 was precisely to ensure the provision of information of better quality than would be available under the existing paragraph. The text proposed by Canada offered an opportunity for that.

17. Mr. FRANCFORT (France) asked the Canadian representative what would be the function of paragraph 9(c) if List B substances were included in paragraph 10(a). In the case of acetic anhydride, for example, which was the most widely used active principle in acetylation, if only for the common aspirin, and was the subject of thousands upon thousands of movements throughout the world, he doubted the feasibility of a system of mandatory notification except where a request by an importing State for information was backed by serious reasons relating to particular cases and was not a general rule.

18. Mr. de SOUZA (Australia) agreed with the view expressed by the representative of France. As he saw it, the need for countries to keep detailed information on shipments of all List B substances in case a State requested information from them would place an enormous administrative burden on those countries, particularly where substances such as acetic anhydride were concerned. That kind of system could not be operated on a case-by-case basis: either a country kept all the information and had it available in case of request, or it did not.

19. Mr. TANAKA (Japan) strongly supported the view expressed by the Australian representative.

20. Mr. BUTKE (Federal Republic of Germany), while appreciating the fact that the compromise text required exporting Parties to provide information only to Parties requesting it, said that he foresaw difficulties in extending the obligation to notify exports to substances in List B. So far as those substances were concerned, it would be better to cater for their notification in paragraph 9 only, as proposed in the text in document E/CONF.82/3.

21. Mr. WEI (Belgium) said that, although his delegation found the proposal made by the Canadian representative constructive, Belgium belonged to a Community whose somewhat complicated decision-making procedure prevented its members from expressing united support for the proposal immediately.

22. With regard to the comment by a number of representatives that the obligation to provide information would impose a heavy administrative burden on their Governments, it was essential to ensure that requests for information would be made in good faith—only when necessary for suppressing the illicit manufacture of drugs, and not merely for the sake of having information. On that basis, it would be possible to discuss methods of implementing the system and making it less costly and burdensome.

23. Mr. WIENIAWSKI (Poland) welcomed the compromise proposal. It would, of course, impose a burden on States exporting various chemicals, but at least the burden would be limited to exports directed to specific countries which required the information. The possibility existed that information could be requested from manufacturers and exporters in particular cases; that would make the exercise far easier than it would be under article 8, paragraph 10(a), of the basic text.

24. Mr. ASSADI (Islamic Republic of Iran) stressed the importance of article 8 in the international system to combat illicit drug trafficking. He had two points to make about the new proposal. First, he would like to know what would happen if a request for information were not made in time. Secondly, as the USSR representative had indicated, it would be extremely difficult for a Party to monitor a consignment if it did not know the consignee's name.
25. Mr. SINGER (German Democratic Republic) said that in his opinion the proposal made by Canada was consistent with the provision in paragraph 10(b). As he understood it, paragraph 10(b) as proposed in document E/CONF.82/3 allowed for the possibility of extending the application of paragraph 10(a) to substances in List B.

26. Mr. CHEN Yingqing (China) said that his delegation welcomed the compromise text. It was an improvement on the wording proposed in document E/CONF.82/3 and offered a good basis for a consensus. It might be appropriate to amend it in order to take account of the comments made by the Australian representative.

27. Mr. BOURESSLI (Kuwait) said that he saw merit in the compromise text, but he preferred the wording in the basic text because it imposed an unconditional obligation on each Party to provide the competent authorities of the importing country with the information set forth in sub-subparagraphs (i) to (iv). It was essential to include a reference to List B in paragraph 10(a).

28. Mr. TEWARI (India) said he was pleased to note that, under the compromise text, substances in List B would be given the same treatment as those in List A in the matter of information. His preference, however, would be for the wording of paragraph 10(a) as proposed in the basic text, amended to include a reference to substances in List B. It seemed to his delegation that paragraph 10(a) should be considered in conjunction with paragraphs 9(c) and 9(d). Under paragraph 9(d) the exporting country should be able to have all the necessary information and find no serious difficulty in supplying whatever particulars the importing country considered necessary. It seemed right that the administrative burden of providing the information should be the responsibility of the exporting country.

The meeting rose at 6 p.m.

13th meeting
Tuesday, 6 December 1988, at 10.50 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 8 (continued)

Paragraph 10(a) (continued)

1. Mr. DRAKAKIS (Greece,) speaking on behalf of the States members of the European Economic Community, informed the Committee that since the previous meeting informal consultations had been held among the EEC countries with regard to paragraph 10(a). It would now be useful for further informal consultations to take place among all interested delegations, with a view to producing a text that would be generally acceptable.

2. The CHAIRMAN suggested a recess for that purpose.

The meeting was suspended at 11 a.m.
and resumed at 12.35 p.m.

3. Mr. DRAKAKIS (Greece) reported that the following compromise had been reached in the informal consultations. The proposal was that paragraph 10(a) should read as worded in document E/CONF.82/3, with the words "upon request to the Board by the interested Party" inserted after the words "paragraph 9"; the words "and, when available, the consignee" added at the end of sub-subparagraph (i); and a new sub-subparagraph (v) reading: "Any other information which is mutually agreed upon by the Parties".

4. Mr. SABOIA (Brazil) asked why the words "upon request to the Board" should be inserted. He envisaged a system under which the exporting country would provide information to the importing country, presumably on a regular basis, the obligation to provide it being upon States, not the Board or any other United Nations body. He doubted whether the transmission of requests by a technical body such as the Board would make for a speedy procedure which would meet the needs of requesting Parties.

5. Mr. BUTKE (Federal Republic of Germany) said that, as he had understood the discussion in the informal consultations, the purpose of providing for requests to go through the Board had been to establish a reliable notification procedure which would ensure that all Parties were informed of the request made by the importing country. Notification could equally well be channelled through the Secretary-General or through any appropriate United Nations body. The proposed notification procedure was based on the procedure in article 13 of the 1971 Convention on Psychotropic Substances.

6. Mr. TRINCELLITO (United States of America) confirmed the preceding speaker's understanding of the reason for introducing the Board into the notification
procedure. Once a notification had been made, shipments should obviously be reported directly from one Party to another. Provided that was understood, he could support the new proposal and hoped that it would be approved.

7. Mr. MBOKWERE (Nigeria) said that his delegation approved the new proposal.

8. Mr. de SOUZA (Australia) also approved the new proposal.

9. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he was prepared to accept the new text. Nevertheless, he questioned whether it was appropriate for two Parties transacting business to ask one another for addresses through the Board. Surely that was a matter to be handled between the Parties themselves?

The meeting rose at 1 p.m.

14th meeting
Tuesday, 6 December 1988, at 3.30 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 8 (continued)

Paragraph 10 (continued)

1. The CHAIRMAN informed the Committee that, in connection with the proposal for paragraph 10(a) put forward by the Greek representative at the previous meeting, he had consulted the Secretary of the Board on the proposed inclusion in the first line of paragraph 10(a) of the words “upon request to the Board by the interested Party”. He had been told that it was customary for such requests to be made to the Secretary-General. Since the authors of the proposal wished to follow the practice adopted in existing international drug control treaties, he suggested that the insertion should refer to the Secretary-General instead of the Board.

2. It was so decided.

3. Mr. PARAN (Israel) said that he was not clear whether the proposal in question dealt with Lists A and B or only List A.

4. The CHAIRMAN replied that, as he understood it, the proposal concerned only List A.

5. Mr. TANAKA (Japan) said that his delegation accepted the proposal.

6. Mr. RAMESH (India), supported by Mr. ASSADI (Islamic Republic of Iran), said that he too would accept it if a reference to List B was added to paragraph 10(a)(ii).

7. Mr. WIJESEKERA (Sri Lanka) said that he could support either the original text in document E/CONF.82/3 or the new wording. The latter had the advantage of an additional sub-subparagraph (v) which provided for the possibility of bilateral agreements between States. He reminded the Chairman of his earlier suggestion that members should be given an opportunity at an appropriate time to discuss the composition of Lists A and B.

8. Mr. de SOUZA (Australia) pointed out that the question of including a reference to List B had been a major stumbling-block in the informal consultations. The consensus on the new proposal had been achieved only with the exclusion of the reference to List B and would break down if it was inserted.

9. Mr. DRAKAKIS (Greece) endorsed the Australian representative’s statement.

10. Mr. SUKANDAR (Indonesia) favoured the inclusion of a reference to List B.

11. Mr. WIJESEKERA (Sri Lanka) suggested that it would be useful to know the motives for excluding a reference to List B and whether there was any danger in including one. The List in its present form was satisfactory to Sri Lanka.

12. Mr. TRINCELLITO (United States of America) said that all the substances listed were important, but it was felt that those in List A, because of their more limited legitimate and practical uses, involving fewer shipments, lent themselves better to the type of all-shipment reporting envisaged in paragraph 10. The Committee would presumably take up the question of the composition of the Lists once a decision had been reached on paragraph 10.

13. The CHAIRMAN said that, in his opinion, the wishes of those who wanted a reference to List B to be added to paragraph 10(a) should be met by the wording of paragraph 10(b), which permitted stricter national measures of control than provided in paragraph 10(a), and consequently measures for monitoring any of the
substances in List B. Furthermore, paragraph 9(c) provided a mechanism for applying the provision in paragraph 10(a) if those stricter national measures needed supplementing by international action. A Party faced with the problem of smuggled List B substances could thus take stringent administrative action and require notification from the exporting country.

14. Mr. RAMESH (India) said that, while preferring the inclusion of a reference to List B, he would join the consensus in favour of excluding one.

15. Mr. ASSADI (Islamic Republic of Iran) pointed out that although a country was free to take action under paragraph 10(b)—his own country, for example, imposed very severe penalties for smuggling acetic anhydride—such measures were unilateral and consequently less effective than international measures. His delegation would nevertheless join the consensus.

16. Mr. ASAD (Pakistan) said that he doubted whether, in view of the new proposal for subparagraph (a) and the existence of the words “provided by this paragraph” in subparagraph (b), List B substances could ever be brought into the system through the latter provision. Since a Party could adopt stricter or more severe measures of control in its own territory without the authority of subparagraph (b), he suggested that the latter should be brought into a proper relationship with the new wording proposed for subparagraph (a), either by the word “Party” being put in the plural and the words “of control than those provided by this paragraph” being deleted, or by subparagraph (b) being omitted altogether.

17. The CHAIRMAN said that he could see no great difference between using the singular or the plural, since it was the right of a Party or of Parties to make national decisions. Without the provision in subparagraph (b), a decision by a Party on anything connected with article 8 could be contested by other Parties. The confirmation in subparagraph (b) of the right of a Government to apply more stringent measures of control than those provided by a given convention would strengthen government action. He believed that that was why the drafters of the article had been careful to provide assurance that Governments should not be restricted in their action on their national territory and that such action should not be considered as violating the convention. Paragraph 9(c) permitted combined action at both the national and the international levels.

18. Mr. FRANCFORT (France) drew attention to article 19, which provided that a Party could adopt more strict or severe measures than those provided in the convention as a whole. That article could be applicable in meeting the point raised by the representative of Pakistan.

19. Mr. MAROTTA (Italy) endorsed the Chairman’s interpretation of subparagraph (b) and drew attention to the reference to co-operation in article 8, paragraph 1, which could facilitate the adoption of concerted measures by Parties over and above those taken at the national level.

20. He said that the words “Les Parties” in the French version of subparagraph (b) should be put in the singular to agree with the English version.

21. Mr. LeCAVALIER (Canada) asked whether, if article 19 was adopted by the Conference, it would be necessary to delete paragraph 10(b), since article 19 included the idea of stricter control in all fields of the convention, not only those dealt with in article 8.

22. The CHAIRMAN said that the question raised by the Canadian representative might be settled when article 19 came up for discussion.

23. He invited the Committee to approve the text of paragraph 10 as proposed in document E/CONF.82/3 and amended by the representative of Greece at the previous meeting in respect of paragraph 10(a) (E/CONF.82/C.2/ SR.13, para. 3), but with the words “and upon request to the Secretary-General” replacing the words “upon request to the Board”.

24. Paragraph 10, as amended and corrected, was approved.

25. Mrs. de la GARZA (Mexico) said that, although she had joined the consensus on paragraph 10 in a spirit of compromise, she believed that the text approved by the Committee represented a retrograde step in relation to the measures for controlling precursor chemicals provided for in articles 31 and 12 respectively of the 1961 Single Convention and the 1971 Convention on Psychotropic Substances.

**Paragraph 1**

26. Mr. TANAKA (Japan) introduced his delegation’s amendment (E/CONF.82/C.2/L.11), the purpose of which was to ensure that the provisions of paragraph 1 were enforceable at the domestic and international levels. If Lists A and B were to be expanded to include substances widely used in large quantities but rarely used in the illicit production of narcotic drugs or psychotropic substances, it would be difficult to apply that provision effectively. Some indication of the nature of the substances to be included in Lists A and B was therefore required so as to avoid confusion over the real purpose of the provision.

27. Mr. LeCAVALIER (Canada) said that it was difficult to include terms such as “critical precursors” and “essential chemicals” without making it clear what they meant. After two years of discussion, however, the experts who had considered article 8 had found it impossible to define them in sound scientific terms, and had therefore decided not to use them; in any case they were not necessary. In the circumstances, he suggested that the representative of Japan might reconsider his amendment.

28. Mr. TANAKA (Japan) withdrew his delegation’s amendment on the understanding that the provisions of paragraph 1 were designed to make it clear that each Party was required to implement the provisions of the succeeding paragraphs by appropriate measures under its legal or administrative system, and that in that sense...
Paragraph 8 bis

37. Mr. RAMESH (India), introducing his delegation’s proposal for the insertion of a new paragraph 8 bis (E/CONF.82/C.2/L.5 and Corr.1), said that article 8 dealt mainly with international measures, whereas in his delegation’s opinion it would not be possible to exercise stringent international control without national measures. The proposed paragraph 8 bis therefore set forth a number of national control measures which should help in ensuring more effective control at the international level.

38. Mr. TRINCELLITO (United States of America), while appreciating the Indian delegation’s motives in submitting its proposal—indeed, the United States itself exercised extensive control over the industry which distributed precursor and essential chemicals—thought that it went into too much detail in respect of action to be taken domestically by individual States. Moreover, the new paragraph might be more acceptable if it was not made mandatory.

39. Mr. ASAD (Pakistan) saw no need for the Indian proposal; the convention was concerned mainly with bilateral arrangements, whereas the amendment dealt with internal arrangements.

40. Mrs. ADEGBOKUN (Nigeria) said that the proposal would not create any problem for her delegation.

41. Mr. SPURGEON (United Kingdom) said that his delegation would support the proposed new paragraph if the word “shall” in the second line of sub-paragraph (a) were replaced by the word “may”.

42. Ms. ROMERO (Bolivia) was in favour of the Indian proposal because she believed that controls should be as strict as possible.

43. Ms. CHUNG Tsu Tuan (Malaysia), while supporting the Indian proposal, asked for clarification of sub-paragraph (b)(iii), which seemed to indicate that two authorizations were required for conducting business.

44. Mr. LeCAVALIER (Canada) took issue with the mandatory nature of the proposal, because Parties could use article 9 or article 19, for example, in establishing discretionary measures. His delegation could support it, however, subject to the change suggested by the United Kingdom representative.

45. Mr. HOURORO (Morocco) said that the Indian proposal was, on the whole, sound, but he would not object to its being made less rigid, as suggested by certain delegations.

46. Mr. CHYANG (Cameroon) supported the Indian proposal. In Cameroon, the pharmaceutical profession, as well as trade in and the sale and possession of the substances in question, had all been placed under the control of the Ministry of Health by Decree No. 83/61 of 14 June 1983.
47. Mr. SIDI (Mauritania) wholeheartedly supported the Indian proposal.

48. Mr. HOBBING (Observer, Commission of the European Communities) endorsed the views of the United Kingdom and Canadian representatives. There was some contradiction between the proposed new paragraph 8 bis and paragraph 1 of draft article 8, but he, too, could support the amendment if the word "shall" in the second line of subparagraph (a) were replaced by the word "may".

49. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the United Kingdom representative’s suggestion seemed to offer a compromise that could make the Indian proposal generally acceptable.

50. Mr. SKRLJ (Yugoslavia), Mr. HULTSTRAND (Sweden), Mr. ABUTALIB (Saudi Arabia) and Mr. TANAKA (Japan) supported the United Kingdom representative’s suggestion.

51. Mrs. de la GARZA (Mexico) felt that replacement of the word “shall” by “may” as a compromise would weaken the provisions of the 1961 Single Convention and the 1971 Convention on Psychotropic Substances. The Indian proposal reflected the provisions of articles 29 and 30 of the 1961 Single Convention, which required Parties to satisfy a number of requirements. Her delegation could not support wording that would detract from that Convention.

52. Mr. TANAKA (Japan) supported the views expressed by the United Kingdom, Canadian, Saudi Arabian and other delegations.

53. Mr. ARANAND (Thailand) supported the views of the United States representative but accepted the compromise solution proposed by the United Kingdom representative.

54. Mr. SABOIA (Brazil), while sympathetic to the Indian proposal, was receptive to the arguments against mandatory provisions and to the point made by the Mexican representative. He suggested redrafting the Indian proposal on the following lines, making the first part mandatory and the second part optional:

"Without prejudice to the provisions contained in paragraph 1 of this article, the Parties shall take appropriate measures regarding the manufacture, trade or distribution of substances in List A and List B with a view to preventing their diversion for illicit purposes. Such measures may include . . . ."

55. Mr. RABAZA (Cuba), Mr. LOUZ (Algeria), Mr. SUKANDAR (Indonesia) and Mrs. TORRES GRATEROL (Venezuela) agreed with the Mexican representative and supported the Indian proposal.

56. Mr. SPURGEON (United Kingdom) supported the wording suggested by the Brazilian representative. His delegation was anxious to achieve an effective system for monitoring and controlling diversion of essential chemicals and precursors. It certainly did not want to become the author of a compromise that would weaken the general impact of article 8 which dealt specifically with precursors and chemicals, and not with narcotic drugs or psychotropic substances—a more specific and specialized subject to which careful attention must clearly be paid. The United Kingdom position was that, if national authorities wished to introduce more stringent and controlling provisions than those currently provided for by article 8, it was for them to do so; the introduction of such provisions should not be required of all Parties without taking into account the positions of individual countries.

57. Mr. FAKHR (Islamic Republic of Iran), Mr. WETUNGU (Kenya) and Mr. STEWART (Bahamas) supported the Indian proposal, which would provide stricter control measures for substances in Lists A and B.

58. Mr. TRINCELLITO (United States of America) failed to see how the replacement of “shall” by “may” would weaken the two existing Conventions; since neither contained a requirement for licensing precursor or essential chemicals. If anything, the Indian proposal, with that change, would for the first time provide a clear indication of the possibilities offered by the implementation of paragraph 1 of draft article 8 and would represent significant progress in imposing control over precursors and essential chemicals.

59. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed with the United States representative that the word “may” would not weaken the existing Conventions. The wording suggested by the Brazilian representative seemed to offer the possibility of achieving a compromise text on the basis of the Indian proposal.

60. Mr. RAMESH (India) agreed with the Mexican representative that the provisions of the article under discussion should not dilute the provisions of existing Conventions.

61. Noting that India had an elaborate licensing system which might not be entirely practicable in all cases, he said that the principle that all items should be subject to the same kind of control and monitoring at the national level should not be overlooked.

62. There was much merit in the wording proposed by the Brazilian representative which made it clear that the provisions of the paragraph under discussion would not in any case be weaker than those of earlier Conventions and left it to the Parties concerned to choose one or more of the various systems of control and regulation. A pertinent question had been asked concerning the possibility of duplication in the licensing of premises and licensing for conducting operations. Since licensing systems varied from country to country, as did rules and regulations, the Brazilian proposal would pave the way for a sound compromise.

63. The CHAIRMAN said that, if there were no objections, he would invite the Indian representative, in consultation with interested delegations, to prepare a text for consideration at the next meeting. He suggested that
further consideration of paragraph 8 should be deferred until the afternoon meeting of the following day.

64. It was so agreed.

Paragraph 9

65. Mr. TANAKA (Japan) introduced his delegation’s amendments (E/CONF.82/C.2/L.11), which were intended to ensure that States could choose a monitoring system suited to their national situations and regulations. He explained, in connection with the amendment to subparagraph (d), which was consistent with the provisions of article 11 bis, that close co-operation with the exporter or consignor was essential if the article were to be effective.

66. The purpose of the proposed new subparagraph (d) bis was to ensure confidentiality, without which effective information-gathering would be hampered and ability to enforce the provision considerably reduced. He was, however, prepared to replace the amendment by a simpler provision, based on article 5, paragraph 10 bis, on the following lines: “The competent authority of the exporting country may require that the competent authority of the importing country keep confidential the content of the notice”.

67. Mr. TRINCELLITO (United States of America) suggested that the Committee should deal separately with the amendments to the existing text of paragraph 9 and the proposed new subparagraph (d) bis, since they concerned entirely different matters.

68. Mr. WIENIAWSKI (Poland) thought that the amendments to subparagraphs (a), (b), (d) and (e) were useful because they tried to take into account the existence of different administrative and commercial systems.

69. Mr. SABOIA (Brazil) preferred the existing draft of paragraph 9, which established a reasonably flexible system for preventing the diversion of substances to illicit purposes. For example, the words “a system” in subparagraph (a) would enable States to fulfil their obligations in accordance with their own commercial practices and regulations. The amendment to subparagraph (b) was unnecessary, however, since if there was enough evidence of a substance being used for illicit processing of narcotic drugs or psychotropic substances, it was obvious that strict preventive measures would have to be taken.

70. Regarding the proposed new subparagraph (d) bis, he said that a requirement that information from the exporting countries should be kept confidential was reasonable, and he would accept some provision to the effect that such information should not be used in an inappropriate way by the importing country.

71. Mr. SPURGEON (United Kingdom) agreed with the Brazilian representative. While he understood some of the reasoning behind the amendments, the proposed rewording of paragraph 9 might not be entirely necessary. Could the representative of Japan explain, in particular, the reason for the insertion of the words “as appropriate” in subparagraph (b)? The proposed new subparagraph (d) bis merited serious consideration, however, because there would be concern in industrial and commercial circles that information supplied in implementation of article 8 should be kept confidential and used only for detecting illicit manufacturing.

72. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he preferred the original text of paragraph 9, which had been adopted after a lengthy discussion of various possibilities in the preparatory committee and other forums.

73. Mr. KOCH (Denmark) associated himself with the comments of the Brazilian, United Kingdom and USSR representatives. The amendments to subparagraphs (a) and (e) were superfluous and the amendment to subparagraph (b) was unclear. With regard to subparagraph (d), he understood that the proposed amendments conformed to the Committee’s decision on article 11. But article 11 dealt with narcotic drugs and psychotropic substances, whereas article 8 concerned ordinary commercial substances. He had no objection, however, to the replacement of “bills of lading” by “transport documents”.

74. Otherwise he was satisfied with the original text of paragraph 9.

75. Mr. MAROTTA (Italy) recalled that, in approving article 7, the Committee had envisaged the possibility of controlled delivery being applied to substances in Lists A and B. His delegation could therefore accept the inclusion of the words “as appropriate” in subparagraph (b) as including the controlled delivery system. As for the rest of the paragraph, he preferred the original text.

76. Mr. SIDI (Mauritania) supported the original text, except that in subparagraph (d) the words “when available” in square brackets seemed superfluous and might be deleted.

77. Mr. TANAKA (Japan) said that he could accept subparagraphs (a) and (e) of the original text subject to the inclusion of the words “in the way that it deems appropriate to prevent diversion of them” in the opening sentence of paragraph 9, and deletion of the word “imports” in the first line of subparagraph (d).

78. Mr. ASBALA (Libyan Arab Jamahiriya) supported the original text of paragraph 9, subject to removal of the square brackets in subparagraph (d).

79. After a procedural discussion in which Mr. HOURORO (Morocco), Mrs. THISTLETHWAITE (United Kingdom), Mr. SIDI (Mauritania) and Mr. TRINCELLITO (United States of America) took part, the CHAIRMAN said that the Committee would consider the proposed new subparagraph (d) bis at the following meeting. He suggested that, in the meantime, the representative of Japan should work out a text embodying the substance of sub-subparagraph (iii) with the help of the United Kingdom, United States, and other interested representatives.
80. It was so agreed.

81. Mr. TANAKA (Japan) reserved his position on the amendments. Subparagraphs (b) and (d), at least, were critical to Japan's ratification of the convention. His delegation had been given strict instructions to amend subparagraphs (a) to (e) and he urged that they should be discussed. However, he would consult his Government and report on his delegation's position at the next meeting.

The meeting rose at 6.20 p.m.

15th meeting

Wednesday, 7 December 1988, at 11.25 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 8 (continued)

Paragraph 9 (continued)

1. Mr. TANAKA (Japan) said that the paragraph was acceptable to his delegation on the understanding that subparagraph (b) covered only activities conducted within the territory over which the State Party had jurisdiction.

2. Mrs. THISTLETHWAITE (United Kingdom) recalled that some representatives had expressed interest in a text on the lines of the Japanese proposal in E/CONF.82/C.2/L.11 for a new paragraph 9(d)bis(iii), and that the delegations of the United Kingdom, United States and Japan had agreed to draft a joint text for submission to the Committee. A provision of that nature would considerably strengthen the article by providing safeguards in respect of information which manufacturers were reluctant to disclose in order not to give their competitors an unfair advantage.

3. Introducing the joint text, she said that it was based on the wording agreed upon by the working group on article 5 (mutual assistance), which also dealt with the confidentiality of information. The proposed text read as follows:

"Where a Party furnishes information to another Party in accordance with 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 or information the disclosure of which would be contrary to public policy (ordre public)".

4. Mr. LeCAVALIER (Canada) said that his delegation could readily agree to the first part of the text concerning trade secrets, but was uncertain what was meant by "information the disclosure of which would be contrary to public policy". That was a broad concept, and if too broadly interpreted might actually hamper the application of article 8.

5. Mr. TANAKA (Japan) said that his delegation would not insist on retaining the words "the disclosure of which would be contrary to public policy".

6. Mr. MAROTTA (Italy) said that the proposed text was in principle acceptable, although he had difficulty in understanding what was meant by "commercial information".

7. Mrs. THISTLETHWAITE (United Kingdom) explained that those words meant the information normally provided by a manufacturer.

8. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation supported the proposed text read out by the United Kingdom representative.

9. Mr. BUTKE (Federal Republic of Germany) said that he could accept the text as amended by the Japanese and United Kingdom representatives.

10. Mrs. THISTLETHWAITE (United Kingdom) proposed the deletion of the words "or information".

11. Mr. TRINCELLITO (United States of America) said that his delegation could support the proposed text as amended by the Japanese and United Kingdom representatives.

12. Mr. KOCH (Denmark) suggested that the Drafting Committee should be asked to consider whether a trade process could in fact be kept confidential.

13. He proposed that the new subparagraph as amended should be included in article 8 as paragraph 10bis.

14. The CHAIRMAN said that he took it that the Committee was prepared to approve the amended text of paragraph 9 and agreed to its inclusion as paragraph 10bis in article 8.
15. It was so decided.

16. Mr. WIJESEKERA (Sri Lanka) said that he wished to present a few observations concerning the lists; his comments would be purely objective, since Sri Lanka was neither a manufacturer of the types of chemicals in List B nor a producer of the types of precursors in List A.

17. He realized that some of the substances in the lists had properties both as reagents and as precursors and therefore that the task of listing them was fraught with difficulties. However, since he understood that the listing process referred to in paragraph 11(b) took nearly a year, consideration might be given to including some other substances in the lists.

18. Acetic anhydride, which was used in 95 per cent of cases to convert opium or morphine into heroin, was in List B; however, since it was almost as easy to use acetyl chloride for that purpose, he suggested that that substance should be included in the list as well as at a later stage. Both substances were used in the textile industry and laboratory practice, and he was aware of the need not to disrupt trade and other licit processes. Moreover, 1-phenyl-2-propy­none, which was in List A, was used in the preparation of amphetamines by a method employing formamide, a substance which he suggested should also be included in the list.

19. He emphasized that his suggestions were not intended to open the door to the wholesale introduction of new substances in Lists A and B.

20. Mr. SINGER (German Democratic Republic), supported by Mr. FRANCFORT (France), suggested that the lists should be called Schedule I and Schedule II, in conformity with the 1961 and 1971 Conventions.

21. The CHAIRMAN noted that most representatives seemed to favour the terms “List I” and “List II”.

22. Mr. GUNEY (Turkey) said that his delegation was still concerned by a point raised during the discussion of paragraph 10: some substances in List II required stricter controls and should, therefore, be transferred to List I. He was aware that paragraph 10 had already been adopted, but he wondered whether acetic anhydride, in particular, could still be transferred to List I.

23. Mr. FAKHR (Islamic Republic of Iran) agreed that acetic anhydride should be transferred to List I.

24. Mr. TRINCHELLITO (United States of America) recalled that the composition of the two lists had been the subject of considerable debate during the meetings of the Review Group. The procedure outlined in article 8, paragraph 2, would be the appropriate mechanism for the transfer of substances between the lists.

25. Mr. KOCH (Denmark) said that his delegation could not agree to the transfer of any substance between the lists. The expert group had stressed the need for a uniform nomenclature of narcotic drugs and psychotropic substances if article 8 was to be properly implemented, and had recommended that the Division of Narcotic Drugs should convene an expert group to standardize that nomenclature. As he understood it, the task of the present Conference was to decide on the text of the convention, leaving the precise contents of the two lists to be decided by the Commission on the recommendation of the Board. His delegation could, if necessary, accept the existing tentative lists, but only in their present form. He asked the Secretariat whether the expert group he had mentioned had indeed been convened.

26. Mr. BABAYAN (Union of Soviet Socialist Republics) said that, on the question of the terms “schedule” or “list”, his understanding of the matter was that the substances covered by the present convention were of a different type from those referred to in the 1961 and 1971 Conventions; the term “schedule” should, therefore, be avoided in order to make that distinction clear.

27. The expert group had allocated substances to Lists I and II on the basis of their chemical properties and effects. It was essential to have a list of specified substances so that States could judge the feasibility of implementing their obligations under the various articles; however, the lists should appear in an annex, rather than in the text of the convention, so that the Commission could amend them as necessary. The present Conference should respect the judgement of the expert group and leave the lists as they were.

28. Mr. GUNEY (Turkey) said that the lists were only provisional and that the participants in the present Conference were fully empowered to suggest amendments to them. His delegation could not accept the lists in their present form.

29. Mr. SZENDRAI (Senior Scientific Officer, Division of Narcotic Drugs), replying to the question raised by the Danish representative, said that the Division had drawn up a nomenclature, including all possible synonyms, which had been distributed at the last session of the Commission and the expert group. That document had used the nomenclature of the International Nonproprietary Names for Pharmaceutical Substances for substances which were commonly used in medications and the internationally accepted abbreviated names for other substances, and the Commission had raised no objections. When the convention entered into force, the Secretariat could prepare a small technical manual listing the most important synonyms.

30. Mr. ASAD (Pakistan) pointed out that the substances in List I were subject to the special procedures on the notification of movements outlined in article 8, paragraph 10. Such information was vital to countries which were trying to control opium production. It was important that certain chemicals—including acetic anhydride—should appear in List I in order to safeguard the specific interests of certain countries.

31. Mr. WIENIAWSKI (Poland) said that the participants in the present Conference were empowered to approve only the proposals contained in the Review Group’s report (E/CONF.82/3) because their Governments had had
time to consider them. Any other proposed changes could be dealt with under the procedure outlined in article 8. He agreed that the lists should appear in an annex to the convention rather than in the text. A statement should be added to the effect that the lists referred not only to the base substances mentioned, but also to their salts, as in the 1971 Convention.

32. Mr. SPURGEON (United Kingdom) agreed that procedure for amending the lists was already available under article 8, paragraphs 2 and 4. His delegation was satisfied with the lists as they stood.

33. Mr. SAVOV (Bulgaria) said that, while his delegation had no objection to the transfer of acetic anhydride from List II to List I, he agreed with the USSR representative that one such change might provoke others. The lists should be left as they were, particularly since the convention already contained a procedure for amending them in the future if necessary.

34. Mr. BERTSCHINGER (Switzerland) asked whether the Division of Narcotic Drugs or the Commission could supply details of the criteria used in drawing up the two lists. The lists should be left as they were unless the Commission had any detailed amendments to suggest.

35. Mr. ASBALI (Libyan Arab Jamahiriya) said that the term "schedule" was more appropriate and specific than "list", since its connotation of "separate classification" was in conformity with his country's domestic law and with the 1961 and 1971 Conventions.

36. Mr. ABUTALIB (Saudi Arabia) said that the criteria for the inclusion of a substance in List I or II should be clearly explained. He, too, was in favour of the term "schedule".

37. The CHAIRMAN said that there seemed to be general agreement that the lists should appear in an annex, rather than in the body of the convention. However, opinion was still divided over the use of the term "list" or "schedule". The representative of Poland had raised an important point concerning the need to include not only base substances, but also their salts, in the lists.

The meeting rose at 1.10 p.m.

16th meeting

Wednesday, 7 December 1988, at 3.25 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 8 (concluded)

1. The CHAIRMAN said that the informal consultations he had held had shown that a majority of delegations favoured continuing in the present convention the practice used in the existing international drug control treaties of employing the term "schedule" for lists of substances. He therefore suggested that the terms "List A" and "List B" should be amended to read "Schedule I" and "Schedule II", respectively.

2. It was so agreed.

Tentative lists

3. The CHAIRMAN suggested the addition of the following wording after each Schedule: "The salts of the substances listed in this Schedule whenever the existence of such salts is possible".

4. It was so agreed.
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, the Parties shall take appropriate measures to monitor the manufacture and distribution of such substances which are carried out within their borders.

"(b) To this end, the Parties may:

(i) control all persons and enterprises carrying on or engaged in the manufacture and distribution of the 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. Mr. TEWARI (India), introducing his delegation's revised proposal, said that it was intended as a rational counterpart to paragraph 9, which concerned the monitoring of international trade in the substances listed in Schedules I and II.

10. Mr. LeCAVALIER (Canada) said that the words "such substances" in subparagraph (a) would mean the substances referred to in the 1961 and 1971 Conventions. They should be replaced by the words "substances in Schedules I and II".

11. Mr. SPURGEON (United Kingdom) supported the Canadian representative's sub-amendment and proposed that the words "of this Convention" should be added at the end of the wording proposed by Canada.

12. Mr. LOUSBERG (Netherlands) and Mr. BABAYAN (Union of Soviet Socialist Republics) supported the revised Indian proposal as amended by the Canadian and United Kingdom representatives.

13. Mr. SOLANO CARRERA (Costa Rica) said he could accept the revised Indian proposal on the understanding that it would be left to the competent authorities to determine what constituted the excess mentioned in subparagraph (b)(iv). The practicalities of international commerce were such that quantities of scheduled substances might remain on importers' books in bonded warehouses for some time, so it would be wrong to take a narrow view of what constituted an excess.

14. Mr. BUTKE (Federal Republic of Germany) supported the revised Indian proposal in that it made the monitoring of scheduled substances mandatory at the national level. He questioned, however, the need for monitoring to begin at the manufacturing stage. In his country the manufacturers concerned were, on the whole, large, reliable companies, the substances in question were not in themselves dangerous to health and there was no risk of their being distributed improperly by employees. Also, some scheduled substances were used up in the manufacturing process itself and did not leave the manufacturer's premises. He thought that the control of scheduled substances should begin when they left the manufacturer to pass into the hands of wholesalers and retailers. He therefore suggested the replacement of the phrase "to monitor the manufacture and distribution of such substances" by the phrase "to monitor the distribution by manufacturers, wholesalers and retailers of such substances".

15. Mr. FRANCFORT (France) pointed out that the opening words of article 8, paragraph 1 read: "Parties shall take the measures they deem appropriate". He proposed that those words should replace the words "Parties shall take appropriate measures" in subparagraph (a). Also, he believed that no reputable firm manufactured scheduled substances for illicit purposes, and he therefore supported the suggestion made by the representative of the Federal Republic of Germany.

16. Mr. KOCH (Denmark) supported the French representative's proposal. It would make the change suggested by the representative of the Federal Republic of Germany unnecessary, since it would then be left to Parties to take whatever measures they deemed appropriate to monitor the distribution of scheduled substances. He proposed that the words "the substances" in subparagraph (b)(i) should be replaced by the words "such substances" in order to eliminate ambiguity.

17. Mr. SABOIA (Brazil) and Mr. TRINCELLITO (United States of America) agreed.

18. Mr. SINGER (German Democratic Republic) supported the Danish representative's proposal.

19. Mr. OSEI (Ghana) suggested that the word "borders" at the end of subparagraph (a) should be replaced by the word "territory".

20. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the changes proposed by the representatives of France, Denmark and Ghana. He might wish to return to the paragraph when the Russian version became available.

21. Mrs. de la GARZA (Mexico) supported the revised proposal but said she might wish to revert to the paragraph when the Spanish version was available.

22. Mr. FRANCFORT (France) accepted the argument put forward by the representative of Denmark. He could not take a final decision on the paragraph until the French version became available.

23. Mr. BUTKE (Federal Republic of Germany) withdrew his suggestion on the understanding that it would be left to each Party to decide what measures, if any, were appropriate for monitoring its manufacturers.
24. The CHAIRMAN said that the previous speaker's understanding was correct. On the world scale, it must be possible to monitor manufacturers. Whereas it might not be necessary to monitor large, reliable concerns, it was vital to monitor the activities of small, unreliable manufacturers. Subparagraph (b) was intended as a list of examples of possible measures that Parties might take in that respect.

25. He requested the Drafting Committee to ensure that the titles of the instruments listed in subparagraph (a) were correct. He invited the Committee to approve the revised Indian proposal as read out by the Secretary and as amended by the representatives of Canada, the United Kingdom, France, Denmark and Ghana, on the understanding that delegations might wish to comment on the text when the non-English language versions appeared.

26. Paragraph 8 bis as read out by the Secretary, as amended, was approved on that understanding.

Paragraphs 1, 3, 4, 5, 6, 7, 11 and 12 were correct. He invited the Committee to approve the revised Indian proposal as read out by the Secretary and as amended by the representatives of Canada, the United Kingdom, France, Denmark and Ghana, on the understanding that delegations might wish to comment on the text when the non-English language versions appeared.

28. Mrs. de la GARZA (Mexico) said that the word "significant" in the phrase "significant illicit processing or manufacture" was unclear and should be deleted.

29. Mr. SAVOV (Bulgaria), Mr. SIDI (Mauritania), Mr. SKRLJ (Yugoslavia), Mr. WIJESEKERA (Sri Lanka), Mr. OSEI (Ghana), Mr. NAVARRO (Chile) and Mr. FAKHR (Islamic Republic of Iran) agreed.

30. Mr. TRINCELLITO (United States of America) pointed out that the word "significant" had been included in order to avoid the necessity of controlling small quantities of scheduled substances, and thus to protect the normal, licit trade in those substances.

31. Mr. KOCH (Denmark) said that it was for Governments to determine what constituted significant illicit processing or manufacture. He pointed out that article 3, paragraph 2, of the Convention on Psychotropic Substances made provision for substances presenting no or a negligible risk of abuse to be exempted from certain of the measures of control provided for under that Convention. Paragraph 13 of the draft convention should therefore be approved as it stood.

32. Mrs. de la GARZA (Mexico) observed that the phrase "to permit significant illicit processing" might be taken to imply that some illicit processing was permitted under the draft convention.

33. Mr. SPURGEON (United Kingdom) said that there was no question of the convention permitting illicit manufacture or processing; the purpose of the paragraph was to enable licit trade in scheduled substances to continue.

34. Mr. LeCAVALIER (Canada) said that instead of referring to the preparations to which the provisions of article 8 should not apply, the paragraph should be so worded as to make the article apply to all preparations containing scheduled substances unless such preparations could be considered exempt from the article's provisions.

35. Mr. FRANCFORT (France) agreed.

36. Mr. LOUBERG (Netherlands), supported by Mr. TRINCELLITO (United States of America), Mr. WIENIAWSKI (Poland), Mr. HAMITOU (Algeria), Mr. BUTKE (Federal Republic of Germany), Mr. LOPEZ (Argentina), Mr. SAVOV (Bulgaria) and Mr. FRANCFORT (France), proposed that the text of paragraph 13 following the word "means" should be deleted.

37. It was so agreed.

Title

38. Mr. LeCAVALIER (Canada) proposed that the first three words of the title should be deleted.

39. It was so agreed.

Definitions

40. Mr. SINGER (German Democratic Republic) said that the terms "Schedule I" and "Schedule II" should be defined. He proposed that the definition of the terms "List A" and "List B" in draft article 1 should be used for that purpose.

41. It was so agreed.

42. Mr. SINGER (German Democratic Republic) suggested that the word "substance" should be defined as meaning any substance in Schedule I or Schedule II.

43. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed, and added that definitions of the terms "narcotic drugs" and "psychotropic substances" were also required. Satisfactory definitions could be found in the Single Convention and in the Convention on Psychotropic Substances. He pointed out that it was vital for the meanings of those terms to be defined for the purposes of the draft convention, bearing in mind that, according to the World Health Organization, tobacco could be considered a narcotic drug. The meaning of the term "psychotropic substance" also depended on the context in which it was used; it had first been employed in respect of the drug largactyl (chlorpromazine), which had psychiatric applications, and was not to be found in the Schedules to either the Single Convention or the Convention on Psychotropic Substances. It was obviously not the intent of the draft convention to criminalize psychotropic substances used in psychiatric treatment.

44. Mr. LeCAVALIER (Canada) said that the terms "processing", "preparation" and "manufacture" should also be defined.
45. The CHAIRMAN pointed out that definitions of the term "preparation" were given in the Single Convention and the Convention on Psychotropic Substances, but they differed.

46. Mr. WIENIAWSKI (Poland) said that the definitions in those treaties referred to pharmaceutical preparations. The draft convention should deal with non-pharmaceutical preparations as well.

47. The CHAIRMAN suggested that the Committee should not attempt to redefine the term "preparation", given that those definitions were to be found in the existing international drug control treaties.

48. It was so agreed.

49. Mr. BABAYAN (Union of Soviet Socialist Republics) said that, since the terms "processing", "manufacturing", "narcotic drug", "psychotropic substance" and "preparation" were used in various other articles of the draft convention, they should be considered under article 1.

50. The CHAIRMAN suggested that, for the definitions of the terms "narcotic drug" and "psychotropic substance", the Committee should recommend to the Drafting Committee the use of the definitions of the terms "drug" and "psychotropic substance" found in the Single Convention and the Convention on Psychotropic Substances respectively. Those terms could be considered technical terms and therefore within the Committee's mandate.

51. It was so agreed.

52. Article 8 as a whole, as amended, was approved.

The meeting rose at 5.50 p.m.

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17th meeting
Thursday, 8 December 1988, at 10.30 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 12

1. Mr. SABOIA (Brazil) emphasized that the draft convention must cover all aspects of the illicit traffic in narcotic drugs and psychotropic substances and also reflect the legitimate interests and concerns of various countries and groups of countries. While supporting the basic aim of article 12, therefore, he believed that the fundamental principles and rules of international law must be borne in mind, particularly in respect of the territorial jurisdiction of States.

2. He recalled that Brazil had expressed reservations in respect of paragraph 3 concerning the change in wording from "the high seas as defined in Part VII of the United Nations Convention on the Law of the Sea" to "beyond the external limits of the territorial sea of any State" in document E/CONF.82/3. The change upset the balance achieved in the Convention on the Law of the Sea of the rights and duties of coastal and other States in the exclusive economic zone, an area under national jurisdiction. The wording of paragraph 3 in document E/CONF.82/3 would give other States rights in the EEZ of coastal States not granted either explicitly or implicitly under customary law or the United Nations Convention on the Law of the Sea. The rights and freedoms enjoyed by other States in the EEZ of coastal States were specified in article 58 of that Convention, and it was not obvious that the boarding, searching and seizure of vessels suspected of engaging in illicit traffic were freedoms associated with navigation or uses of the sea related to those freedoms. The one provision of the United Nations Convention on the Law of the Sea which granted all States the right to seize vessels was article 105, which concerned seizure of pirate ships, and that right was explicitly limited to seizure on the high seas, and explicitly excluded any area within the jurisdiction of any State.

3. The Conference on the Law of the Sea, while it had been unable to solve certain issues concerning the definition of rights and duties in the EEZ, had recognized the special nature of that zone as being part neither of the high seas nor of the territorial sea. To grant rights in the EEZ which clearly exceeded those granted under the Convention on the Law of the Sea could not be justified, as it would be tantamount to deciding an issue which the Conference on the Law of the Sea had deliberately left open. The formula which dealt with rights not specifically covered by the Convention on the Law of the Sea was to be found under article 59 of that Convention.

4. Brazil's view was that the paramount importance of the interests of the coastal States in their EEZs, which the
Convention on the Law of the Sea had recognized by according a wide range of rights to such States, would be incompatible with the unlimited exercise by other States of such major law enforcement activities as the boarding, searching and seizure of foreign ships. Also, coastal States had a clear interest in being aware of illicit traffic in their EEZs and might wish to participate in eliminating it, not least because illicit traffic in those zones might be related to similar offences either being committed or about to be committed in their territory. Given that illicit traffic in drugs might well be associated with other serious crimes such as arms smuggling and currency offences, it was clear that the interests of coastal States were extensively affected. He noted that the Chilean amendment (E/CONF.82/C.2/L.22) reflected concern about the implications, for trade and sea transport, of actions which might be taken against suspect vessels.

5. As one of the sponsors of the amendments in document E/CONF.82/C.2/L.21, he explained that they had been drafted in the light of the above considerations with the aim of achieving a consensus, and were intended to strengthen co-operation while taking into account the interests of coastal and other States and the provisions of the United Nations Convention on the Law of the Sea.

6. Mr. ZURITA (Venezuela) recalled that, at the Conference on the Law of the Sea, his country had proposed the establishment of EEZs extending up to 200 miles from the coast over which the coastal State would exercise jurisdiction limited strictly to the exploration, exploitation and protection of natural resources. Article 55 of the United Nations Convention on the Law of the Sea clearly defined the specific legal régime of the EEZ, and the rights enjoyed by the coastal State within the EEZ were set out in article 56. Article 58 stated explicitly that, within the EEZ, all States enjoyed the freedom of the high seas set out in article 87. The Convention thus preserved traditional rights and freedoms of the high seas within the EEZ. As the illicit traffic in drugs was covered by the norms in force for the high seas, there were no grounds for invoking the provisions of article 59 of the Convention on the Law of the Sea, which concerned the resolution of conflicts regarding the attribution of rights and jurisdiction in the EEZ. Venezuela therefore supported in principle the wording of paragraph 3 in document E/CONF.82/3.

7. Mr. GASPAR (Portugal), speaking as one of the sponsors of the amendment in document E/CONF.82/C.2/L.21, said that it reflected a desire to ensure that the draft convention under consideration was in line with the United Nations Convention on the Law of the Sea.

8. Mr. MOAYEDODDIN (Islamic Republic of Iran) supported that amendment and suggested that specific reference to the Convention on the Law of the Sea should be made in the text of paragraph 3 proposed therein.

9. Mrs. ROUCHEREAU (France) agreed that there should be no conflict with the provisions of the Convention on the Law of the Sea, which must form the basis of article 12. She pointed out that paragraph 1(a) of article 33 of that Convention enabled coastal States to exercise the control necessary to prevent infringement of, inter alia, their sanitary laws, a provision which, in her view, covered illicit traffic in drugs, and the French proposal in document E/CONF.82/C.2/L.14 for a new paragraph 3 bis had been drafted on that understanding. While supporting the rights of States in the contiguous zone, France nevertheless opposed any interpretation of article 56 of the Convention on the Law of the Sea which might give coastal States special rights in terms of the illicit traffic in drugs within the exclusive economic zone.

10. Mr. SIBLESZ (Netherlands) was in favour of retaining the text in document E/CONF.82/3, as suggested by the representative of Venezuela.

11. He supported the idea of compensation for boardings, searches and seizures which proved unjustified, but thought that it was for the flag State to establish its conditions, including those concerning compensation, when permission was first granted to board, search or seize. He pointed out that the proposed text of paragraph 3 contained the safeguard clause “without prejudice to any rights provided for under general international law”, concurred with the French representative that the Convention on the Law of the Sea must be the basis for article 12, and supported her interpretation of that Convention concerning the applicability of article 33.

12. Neither article 56 nor article 58 of the Convention on the Law of the Sea gave coastal States rights in the matter of suppressing the illicit transport of drugs.

13. Mr. RAMESH (India) said that the replacement in document E/CONF.82/3 of the earlier reference to the high seas by the words “beyond the external limits of the territorial sea” had been unwarranted and was an attack on the rights conferred on coastal States under the Conference on the Law of the Sea. The erosion of those rights was particularly marked in respect of the contiguous zone. Article 33 of the Convention on the Law of the Sea must apply, and he suggested that its provisions should be reflected in the draft convention.

14. Mr. RAIMONDI (Italy) concurred with the representatives of Venezuela, France and the Netherlands that article 58 of the Convention on the Law of the Sea gave no special rights to coastal States in the matter of suppressing the illicit traffic in drugs. The provisions covering the high seas should therefore apply to the EEZ.

15. Mr. LECAROS de COSSIO (Peru), introducing his delegation’s amended paragraph 3 in document E/CONF.82/3, page 113, said that paragraph 3 as it stood was at variance with the Convention on the Law of the Sea in that it conflated the contiguous zone and the EEZ, whereas States were granted different rights over those zones under the Convention. Both the contiguous zone and the EEZ were distinct from the high seas, to which the provisions of paragraph 3 should apply.
16. Mr. WUNDERLICH PIDERIT (Chile), introducing his delegation's amendment to paragraph 3 (E/CONF.82/C.2/L.22), said he was concerned that the provisions of paragraph 3 in document E/CONF.82/3 went further than the Convention on the Law of the Sea, and concurred with previous speakers who had urged that the provisions of that Convention must stand unaltered. The economic life-blood of many developing countries, including his own, flowed along sea trading routes, and it was thus vital to their economies to keep the trade lanes open. The possible economic impact of the irresponsible and unlimited right to inspect merchant vessels on the high seas, which might result from the text of the paragraph as it stood, was much greater than might appear.

17. His delegation's amendment was therefore intended to protect exporters in developing countries and to avoid setting up a barrier to international trade while at the same time making it possible to control the illicit traffic in drugs. A large proportion of shipments went by vessels flying flags of convenience, and the flag States in question would have no reason to refuse malicious requests to board and inspect, thus leaving defenceless the exporters whose goods were being carried.

18. In considering the provisions of article 12, it was important to remember the meaning of the word "inspection" in practical terms, and he described in detail the vast number of operations it involved. Moreover if it was necessary to inspect loaded holds, the vessel would have to put into port and its cargo unpacked and checked against the bill of lading; smuggled goods and drugs were frequently carried in crates whose contents appeared quite innocent on the manifest. All those operations took time and cost money, and if the cargo was perishable and deteriorated, delivery would be refused or penalty clauses for delay invoked. Insurance coverage might be suspended or premiums increased. In sum, the losses suffered by cargo and shipowners might be completely disproportionate to the value of the contraband.

19. In that connection, he added the words "and it is impossible to do so on the high seas, . . ." after the word "cargo" in the first line of the second part of his delegation's amended paragraph. The phrase "costs of inspection" in that paragraph meant all costs incurred by the inspection over and above the current norm for freight charges, any dues and duties, additional fuel consumption, pilotage and any losses suffered by the shipowner, the owner of the cargo, the crew or the passengers. The provision that the inspection should be carried out in the port of destination protected the interests of exporters and importers by avoiding any unplanned diversions and delays. Shipowners were protected by the guarantee that that particular leg of the voyage could be completed and the principle of freedom of navigation was safeguarded.

20. Mr. SUKANDAR (Indonesia) said he was concerned that paragraph 3 was not in keeping with article 108 of the Convention on the Law of the Sea, which mentioned the suppression of illicit traffic engaged in by ships on the high seas. The paragraph as it stood gave rights to third parties within the contiguous zone which were at variance with article 33 of the Convention on the Law of the Sea, and its applicability should be restricted to the high seas.

21. Mr. HOURORO (Morocco) agreed with the previous speaker that, under the paragraph as it stood, there would be a clash of jurisdiction in the contiguous zone. The provisions of the paragraph were excessively complicated, bringing into play as they did coastal States, flag States and States with grounds for suspecting a particular vessel on the high seas, in the EEZ and in the contiguous zone.

22. Mrs. de la GARZA (Mexico), introducing the Mexican amendment in document E/CONF.82/3, page 113, said its purpose was to avoid prolonged and fruitless debate on various concepts in the Convention on the Law of the Sea. The provisions which Mexico wished to change were unacceptable because, firstly, they upset the delicate balance struck in the Convention on the Law of the Sea; secondly, they adversely affected the freedom of navigation; and thirdly, certain provisions implied that coastal States must cede some degree of jurisdiction.

23. Mr. INNIS (United States of America) supported the text of article 12 as proposed in document E/CONF.82/3. Action by third parties against vessels engaged in illicit traffic within the EEZ was possible under article 58 of the Convention on the Law of the Sea, as well as—by reference—under articles 88 to 115 of that Convention, which were general provisions applicable to the high seas. It was in keeping with customary international law that third States might take action against vessels involved in drug trafficking with the authority of the flag State and beyond the limits of the territorial sea.

24. Mr. BOURESSLI (Kuwait) said the provisions of paragraph 3 were unconvincing. The phrase "reasonable grounds for believing" was vague, no time scale for any action was mentioned, and it was unclear what the result would be if no drugs or contraband was discovered.

25. Mr. ASBALI (Libyan Arab Jamahiriya) said that the original proposal contained all the elements necessary for international co-operation, but that some precautions were needed: the provisions of the article should not conflict with those of the Convention on the Law of the Sea. He agreed with the previous speaker that the words "reasonable grounds" were unclear, and said that no action must be taken without the prior authorization of the flag State—a limitation which was, fortunately, made clear in paragraph 3.

26. Ms. MANDERSON-JONES (United Kingdom) said that the original proposal did not undermine the Convention on the Law of the Sea or represent any encroachment on the EEZ concept. States' rights in the EEZ were well covered under article 56 of the Convention on the Law of the Sea, and she concurred with the United States representative that article 58 of the Convention on the Law of the Sea made it plain that the provisions applying to the high seas also applied within the EEZ. It was not the case
that the rights of coastal States were infringed by an agreement by the flag State for one of its vessels to be stopped by a third State within the exclusive economic zone. The purpose of the article—a purpose served by the wording in document E/CONF.82/3—was to ensure the fullest possible international co-operation in suppressing seaborne illicit traffic, which was a constant threat to the United Kingdom, an island State.

27. Mr. MESLOUB (Algeria) said that the conflict between the provisions of the Convention on the Law of the Sea concerning the contiguous zone and the provisions of paragraph 3 gave cause for concern. Any measures that needed to be taken by third parties should be taken outside the contiguous zone. He thought it might be appropriate to develop some special formulation concerning the EEZ, as the Convention on the Law of the Sea was in effect silent on the matter.

28. Mr. DZIOUBENKO (Union of Soviet Socialist Republics) said that the problem of the EEZ had been resolved under article 56 of the Convention on the Law of the Sea, which contained nothing to the effect that coastal States should be required to give or withhold permission to seize and inspect the vessels of third parties. Nothing should undermine the basic principle that the flag State had rights over its own vessels, including the right to authorize a third party to stop and search it on the high seas, as well as in the EEZ.

29. Mr. KAPELRUD (Norway) supported the provisions of the article as drafted in the original proposal, which represented a delicate balance painstakingly achieved, and should not be jeopardized.

30. Mr. GONZALEZ LOPEZ (Cuba) concurred with the representative of Kuwait that the phrase "reasonable grounds" was difficult to interpret, and with the Chilean representative's remarks concerning the practical problems involved in boarding and searching. Paragraph 3 was unsatisfactory in that it was difficult to understand either its meaning or its scope and, in amending it, the paramount consideration should be that there must be no deviation from the provisions of the Convention on the Law of the Sea.

31. Mr. TALLAWY (Egypt) agreed that there should be no deviation from the basic principles of the Convention on the Law of the Sea. The proposed paragraph 3, dealing as it did with the rights of coastal, flag and other States in the territorial, contiguous and exclusive economic zones, required clarification and explanation. Many legitimate interests were involved, and no misunderstanding must be allowed to remain.

**Paragraph 1**

32. Mr. de la GUARDIA (Argentina), introducing his delegation's amendment (E/CONF.82/C.2/L.15), explained that the proposal to replace the word "colaborar" by "cooperar" in the Spanish text of paragraph 1 would bring the text of the paragraph into line with article 108 of the Convention on the Law of the Sea and with the other language versions.

33. Mr. SIBLESZ (Netherlands) said that he had reservations concerning the words "illicit traffic", which had not yet been defined by Committee I. Article 12 was concerned with the illicit transport of narcotic drugs and psychotropic substances rather than illicit traffic in them.

34. Mrs. de la GARZA (Mexico) said that she would not insist on the Mexican proposal in document E/CONF.82/3, page 113, to add the phrase "in conformity with the international law of the sea".

35. The CHAIRMAN took it that the text of paragraph 1 in document E/CONF.82/3 was acceptable to the Committee, together with the minor amendment to the Spanish version proposed by Argentina.

36. **It was so agreed.**

**Paragraph 2**

37. Mrs. ROUCHEREAU (France), introducing her delegation's amendment (E/CONF.82/C.2/L.14), said that it was merely one of form, designed to clarify the text in document E/CONF.82/3.

38. Mr. RAIMONDI (Italy) supported the French amendment.

39. Mr. de la GUARDIA (Argentina) said that the basic text had been much improved by the French amendment, and that its division into two sentences made it clearer.

40. Mr. ZURITA (Venezuela) supported the French amendment which was clear and in keeping with the provisions of article 58 of the Convention on the Law of the Sea.

41. Mr. GONZALEZ LOPEZ (Cuba) said that the Spanish term "buque" caused him concern, as some vessels would be termed "naves", depending on their size.

42. Mr. de la GUARDIA (Argentina) drew the Cuban representative's attention to the definition of "ship" contained in article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. The definition of the term "buque" was a national legislative matter: the problem encountered by Cuba did not arise for Argentina.

43. Mr. BABAYAN (Union of Soviet Socialist Republics) also supported the French amendment.

44. The CHAIRMAN took it that the text of paragraph 2 as amended by France was acceptable to the Committee.

45. **It was so agreed.**

**Paragraph 3**

46. Mr. HUGLER (German Democratic Republic) said there was nothing in the Convention on the Law of the Sea to prevent the paragraph being adopted as it stood,
although article 56 of that Convention should, of course, be observed. The question of the definition of the area to which the paragraph should apply was political rather than legal.

47. Mr. de la GUARDIA (Argentina) said that while he supported the general position adopted by the representative of Venezuela, he had a number of particular concerns. It was a moot point whether any rights under the Convention on the Law of the Sea might be eroded by the provisions of the paragraph, but it was clear that there was no conflict with the rights of coastal States over the EEZ, which were enumerated in article 36 of the Convention on the Law of the Sea. He pointed out that under article 58 of that Convention, the provisions of the Convention relating to the high seas applied within the EEZ, as did any other pertinent rules of international law, in so far as they were not incompatible with the provisions on the EEZ. It was clear that the rights accorded by article 33 of the Convention in the continuous zone included the right to exercise the control necessary to suppress the illicit traffic in drugs, and the Argentine amendment in document E/CONF.82/C.2/L.14 had been drafted with that fact in mind. However, the French amendment in document E/CONF.82/C.2/L.15 subsumed the Argentine proposal, which he therefore withdrew.

48. Mr. GASPAR (Portugal) said that paragraph 3 was unnecessary, upset the balance achieved in the Convention on the Law of the Sea, and was likely to give rise to conflict. The mere possibility of a clash between Parties intervening to suppress the illicit traffic in drugs showed that the paragraph was prejudicial to the international cooperation which was the precondition for an effective convention.

49. Mrs. ROUCHEREAU (France), introducing her delegation's amendment (E/CONF.82/C.2/L.14), said that while the change proposed in the beginning of the paragraph reasserted the supremacy of the rules and principles of international law, the proposed new paragraph 3 bis reaffirmed the rights given to coastal States under article 33 of the Convention on the Law of the Sea. The verb "saisir" in the last line of the French version of the paragraph should be replaced by "immobiliser", in line with article 220, paragraph 6 of the Convention on the Law of the Sea.

50. Mr. SIBLESZ (Netherlands) said that while he supported the notion that States should have the same law enforcement rights in the EEZ as on the high seas, in keeping with the Convention on the Law of the Sea, the EEZ could not be termed the "high seas" as such. The phrase "beyond the external limits of the territorial sea" in the basic text of the paragraph echoed the words "beyond the outer limit of the territorial sea" in article 4 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. The French and Argentine proposals aimed at preserving the rights of coastal States in the contiguous zone went in the right direction, and he suggested that the wording given at the end of paragraph 60 of annex III to document E/CONF.82/3 might be a suitable compromise.

51. Mr. RAIMONDI (Italy) concurred with the previous speaker's remarks on the EEZ and supported the French delegation's amendment of paragraph 3 and its new paragraph 3 bis, although the suggestion by the previous speaker in that respect might also be suitable.

52. Mr. SABOIA (Brazil) said that although the French amendments were of assistance in improving the recognition of coast State's rights in the contiguous zone, paragraph 3 must apply to the high seas alone and not the EEZ. He concurred with all those who had said that the balance of rights and duties in the Convention on the Law of the Sea must not be disturbed, and pointed out that the EEZ was an area in which coastal States had rights over and above purely economic rights. Those additional rights were specified in articles 60, 73 and 111. On the other hand, the rights and duties conferred on States under article 58 mainly concerned freedom of navigation, and in no sense included the right to interfere with the freedom of navigation of illicit traffic. That was covered by article 108, which made specific mention of cooperation. Maximum cooperation must be achieved in order to suppress illicit traffic to the extent compatible with the rights of coastal States in strict observance of the Convention on the Law of the Sea.

EXPRESSION OF SYMPATHY IN CONNECTION WITH THE RECENT EARTHQUAKE IN THE UNION OF SOVIET SOCIALIST REPUBLICS

53. The CHAIRMAN, on behalf of the Committee, expressed sympathy in connection with the recent earthquake in the Armenian Soviet Socialist Republic.

54. On the proposal of the Chairman, the Committee observed a minute of silence.

The meeting rose at 1.10 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 12 (continued)

Paragraph 3 (continued)

1. Mr. VALL (Mauritania) emphasized that the purpose of the draft convention was not to resolve the conflict between coastal States and those supporting freedom of navigation, but to deter traffickers and suppress trafficking through co-operation.

2. His delegation supported the French amendment (E/CONF.82/C.2/L.14) because it subordinated the measures envisaged to a Convention that was universal in scope, specified the areas of competence of coastal States, and protected the rights of flag States.

3. Mr. INNIS (United States of America), referring to drug law enforcement action in the EEZ, said that article 56 of the Convention on the Law of the Sea specified the rights and jurisdiction of coastal States in that zone; general law enforcement was not one of those rights. The Convention did not grant a coastal State the right to take drug law enforcement action whenever a violation occurred within its EEZ, nor did international law authorize a coastal State to prevent other States from prohibiting narcotic trafficking in that zone. As was clear from article 58, paragraph 2 of the Convention and that article’s references to articles 88 to 115 relating to the high seas, particularly articles 92, 94 and 108, paragraphs 1 and 2, third States might take action against vessels involved in illicit trafficking with the authority of the flag State. Article 12 as approved by the expert group was therefore consistent with customary international law.

4. Mr. HARRISON (Australia) was in favour of the original text, which was compatible with the Convention on the Law of the Sea. He agreed with the remarks made in that context by the Venezuelan, United States, Netherlands, Argentine and other representatives in support of the original draft and agreed with the French amendment which offered a means of resolving the differences that had arisen.

5. Mr. NAVARRO (Chile) said that, in general, the original text of the paragraph went far beyond the relevant provisions—and particularly article 108—of the Convention on the Law of the Sea. Specifically, moreover, the words “external limits of the territorial sea of any State” were at variance with the wording of that article. There was a real need to suppress drug trafficking at sea, and his delegation was prepared to consider the possibility of granting any Party to the convention the right to board and search, subject to authorization by the flag State. But the procedure followed in such matters must not affect foreign trade or the other rights and freedoms which were specifically mentioned in the Comprehensive Multidisciplinary Outline of 1987.

6. Mrs. ROUCHEREAU (France) said that, notwithstanding the co-operation envisaged under article 108 in respect of ships on the high seas, article 58, paragraph 2 stated that articles 88 to 115—in other words article 108 as well—applied to the EEZ. Her delegation therefore saw no inconsistency between article 12 and the provisions of the 1988 Convention, and could support the wording proposed at the end of paragraph 60 of annex III to document E/CONF.82/3, despite the fact that it was less precise than that of her delegation’s amendment.

7. Mr. GONZALEZ (Cuba) had reservations about the paragraph under consideration since the procedure laid down for boarding and searching vessels could endanger navigation and human safety. His delegation was in favour of action aimed at detecting or suppressing offences, providing that it did not affect the safety of the vessel or interfere with normal shipping and trade.

8. In his view, the Committee would have to decide who would be liable for damages if the “reasonable grounds” invoked to justify boarding and searching a vessel proved to be unfounded. It also had to define the meaning of “ship”. The definition suggested by the Argentine representative was reasonable, and should be included in the text of the draft convention.

9. Mr. BARBOSA FERREIRA (Portugal) said that in the view of his delegation, coastal States had jurisdiction over the EEZ, as defined in the Convention on the Law of the Sea. Implementation of the text as it stood might, however, give rise to disputes.

10. Ms. CHUNG Tsu Tuan (Malaysia) agreed that, in view of article 58 of the Convention on the Law of the Sea, article 108 applied to the EEZ, and felt that the rights and duties of coastal States referred to in paragraph 3 of that article concerned strictly economic matters.

11. Her delegation supported the original text of paragraph 3 but wondered whether the “prior permission” to which it referred was automatic or whether the requested State must be satisfied that reasonable grounds existed; that would have a bearing on the question of liability for any loss or damaged incurred. Her delegation was also in favour of the proposal by the Federal Republic of
Germany (E/CONF.82/C.2/L.10) to restrict the exercise of such powers to warships or government vessels.

12. Mr. SAVOV (Bulgaria) said that the provisions of the Convention on the Law of the Sea should not be called into question. Under that Convention, naval vessels could enter the EEZ, and it was such vessels that would effect boarding operations. The draft convention should not deny a right provided for under the 1988 Convention, and his delegation therefore preferred the original text of paragraph 3 and supported the French amendment which would improve upon that text.

13. Mr. ABUTALIB (Saudi Arabia) said that his delegation supported the original text of paragraph 3.

14. Mr. MESLOUB (Algeria) said that application of the provision should begin at the external limits of the contiguous zone, in accordance with the Convention on the Law of the Sea. It was the coastal State's responsibility to combat illicit traffic in the contiguous zone, but any action taken should not have the effect of unduly hampering international trade. A number of elements in the second part of the Chilean amendment (E/CONF.82/C.2/L.22) were acceptable, and he endorsed the views expressed by the French and Netherlands representatives.

15. Mr. de la GUARDIA (Argentina) suggested that the definition of the term "ship" given in the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation should be included in article 1 of the draft convention. Concern about boarding or searches carried out without adequate grounds should be allayed by the proposal of the Federal Republic of Germany, which established liability in such cases. The Chilean amendment introduced at the previous meeting also contained a number of useful points.

16. The CHAIRMAN suggested that, in view of continuing differences of opinion, the Committee should defer its discussion of paragraph 3 pending the outcome of informal consultations on the subject.

17. It was so decided.

Paragraph 4

18. Mr. DZIOUBENKO (Union of Soviet Socialist Republics) proposed the insertion of the words "that is flying its flag" after "vessel" in the third line.

19. Mr. GUNEY (Turkey) proposed that the phrase "At the time of adhering to the Convention" should be replaced by "At the time of becoming a Party to the Convention", because accession was only one way of becoming a Party to the convention.

20. The CHAIRMAN said that he took it that the Committee was prepared to approve article 12, paragraph 4, as amended by the USSR and Turkish representatives.

21. It was so decided.

Paragraph 5

22. Mrs. de la GARZA (Mexico) said that paragraph 5, which was inconsistent with national legislation on vessels flying the Mexican flag, should be deleted. She would be unable to consider any compromise wording of paragraph 5 until paragraph 3 had been drafted in final form.

23. Mr. DZIOUBENKO (Union of Soviet Socialist Republics) said that the difficulty experienced by the Mexican representative should be overcome by the reference in the paragraph to the need for a prior arrangement or agreement with the flag State.

24. Mrs. ROUCHEREAU (France) explained that the purpose of the French proposal (E/CONF.82/C.2/L.14) was to do away with the phrase "the Party having custody of the vessel" in the original text. The concept of "custody" was vague and would therefore be difficult to interpret.

25. Mr. SOLANO (Costa Rica) said that paragraph 5 was bound up with paragraph 3 and based on the assumption that when evidence of illicit traffic was discovered, the Party having custody of the vessel should take appropriate action. The two paragraphs should be discussed together in the course of informal consultations.

26. Mrs. de la GARZA (Mexico) agreed. Referring to the USSR representative's remarks, she said that offences committed on vessels flying the Mexican flag were regarded as offences committed on Mexican territory. Paragraph 5 as it stood implied renunciation of national jurisdiction, and that was unacceptable to her delegation.

27. Mr. NAVARRO (Chile) said that, subject to the wording eventually agreed upon for paragraph 3, paragraph 5 should contain a reference to appropriate action to be taken with respect not only to vessels and persons, but also to cargo.

28. Mrs. ROUCHEREAU (France), referring to the Mexican representative's remarks, said that France also exercised jurisdiction over ships flying its flag and agreed with the USSR representative that paragraph 5 contained a safeguard clause in that a State would renounce jurisdiction over its vessels only in accordance with treaties or prior agreements or arrangements.

29. Mr. SIBLESZ (Netherlands) agreed. The concern expressed by the Mexican representative was shared by the Netherlands, but the issue had already been dealt with in article 2 bis among others. In the cases envisaged in paragraph 5, the action to be taken might include extradition or any other appropriate measures. He suggested inserting the words "including the present Convention" after "treaties" and before "where applicable".

30. Mr. GONZALEZ (Cuba) supported the Chilean representative's suggestion that a reference should be made to cargo in paragraph 5 because questions of international liability were involved.
31. Mr. HOURORO (Morocco) shared the concern expressed by the French and Mexican representatives with regard to the matter of jurisdiction. Furthermore, his delegation had reservations about discussing paragraph 5 before articles 2 and 2 bis had been finalized by Committee I.

32. The CHAIRMAN suggested that the Committee should move on to paragraph 6 on the understanding that it would revert to paragraph 5 after agreement had been reached on paragraph 3.

33. It was so decided.

Paragraph 6

34. Mrs. de la GARZA (Mexico), recalling her delegation's original proposal to delete paragraphs 3 to 7, said that she was willing to consider compromise suggestions; however, it was difficult to discuss paragraphs 4 to 7 separately, because they were all bound up with paragraph 3.

35. The CHAIRMAN suggested that, in view of the Mexican representative's observations, the Committee might revert to paragraph 6 after it had disposed of paragraph 3.

36. It was so decided.

Paragraph 7

37. The CHAIRMAN said he assumed that his remarks on paragraph 6 also applied to paragraph 7, and suggested suspending the meeting so that informal consultations could be held on paragraph 3.

38. It was so decided.

The meeting was suspended at 4.45 p.m. and resumed at 5.30 p.m.

39. The CHAIRMAN suggested that, as the informal consultations had not resulted in a compromise, the meeting should be adjourned and the informal consultations continued.

40. It was so decided.

The meeting rose at 5.35 p.m.

19th meeting

Friday, 9 December 1988, at 11.20 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 12 (continued)

Paragraph 3

1. The CHAIRMAN suggested that, as informal consultations were continuing, the Committee should defer consideration of paragraph 3 and take up article 6.

2. It was so decided.

Article 6

3. Mrs. de la GARZA (Mexico) pointed out that the Mexican proposal on article 6 in document E/CONF.82/3, page 111, should read: "Delete paragraph 1, subparagraphs (a) to (d) and paragraph 4, and renumber the remaining paragraphs accordingly".

4. With regard to paragraph 4, the Canadian and Mexican delegations jointly proposed the following wording: "The Parties shall facilitate effective co-ordination between their competent national agencies and services and promote, on the basis of bilateral or other agreements, arrangements or practices, the exchange of personnel and other experts".

5. Mr. RIZVI (International Criminal Police Organization) said that his Organization was particularly satisfied by the text of article 6, which proposed the type of action that ICPO/Interpol had consistently promoted. Almost 60 per cent of the more than one million messages exchanged in 1987 among member countries through the ICPO/Interpol channel had dealt with illicit drug traffic. The records of the ICPO General Secretariat contained more than 200,000 computerized files with photographs and fingerprints of notorious international drug traffickers, and information was available round the clock to law-enforcement officers of member countries. ICPO/Interpol also held numerous drug law-enforcement meetings and training courses with a view to strengthening concerted action against international drug traffickers.

6. Mr. TEWARI (India) proposed that the heading of article 6 should be amended to read "Other measures of
co-operation in the area of law enforcement and training”; he preferred “measures” to “forms” because it had already been used in other instruments. In paragraph 1, subparagraph (a), a reference should be made to economic and commercial crime, and subparagraph (b) should be strengthened by adding a reference to the apprehension of criminals and the identification, tracing and seizure of property relating to drug trafficking.

7. His delegation was unable to support the 7-country amendment (E/CONF.82/L.27 and Corr.1) because the “transit State” concept was well established and should not be changed. Nor was there any need to define the term “transit traffic”, which would only complicate the issue. Perhaps “transit State” should be defined as a State which was affected by illicit traffic in narcotic drugs and psychotropic substances in transit through its territory.

8. Mr. SIBLESZ (Netherlands), introducing his delegation’s amendment (E/CONF.82/C.2/L.25), explained that its purpose was to replace various phrases in article 6, paragraph 1, subparagraph (b) by terms that reflected the agreement reached in Committee I.

9. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the wording of paragraph 1, subparagraph (c) could be improved by inserting the words “on the basis of bilateral agreements” after “establish joint teams”, because the whole point of the subparagraph was that Parties should themselves decide matters of detail. It would also be well to state that the Parties should co-operate with competent international organizations.

10. Mr. BROWNING (United States of America) supported the Netherlands amendment but suggested that it could be brought into line with the wording of article 3 by replacing the phrase “from, or drugs, substances or instrumentalties used in, the commission of such offences” in paragraph 1, subparagraph (b) by “derived from, or drugs, substances or instrumentalties used in or intended for use in the commission of such offences”. He was also in favour of the USSR representative’s suggestion to add the words “on the basis of bilateral agreements”, which would meet the point made in the Israeli amendment (E/CONF.82/C.2/L.23).

11. Mr. SIBLESZ (Netherlands) said he assumed that the United States representative’s suggestion also applied to paragraph 2, subparagraph (d).

12. Mr. SABOIA (Brazil) said that his country, which had concluded a number of bilateral agreements covering many of the activities referred to in paragraph 1, was in favour of including a reference to such agreements, without which co-operation would not be feasible. He therefore proposed inserting the words “on the basis of bilateral agreements” after “They shall, in particular” in the introductory sentence or, as suggested by the USSR representative, in subparagraph (c). The text of paragraph 4 had been greatly improved by the joint Mexican/Canadian amendment.

13. Mr. SIBLESZ (Netherlands) supported the USSR representative’s suggestion to include a reference to bilateral agreements in paragraph 1, subparagraph (c). However, as that might suggest the need for some form of formal agreement between States, he proposed adding the words “or arrangements” after the words “bilateral agreements”, on the understanding that such co-operation could be either formal or informal.

14. Mr. YU Jingming (China) said it was important that the channels, excellent facilities and modern communication systems and equipment made available by ICPO/Interpol should be used. Its member States should also make use of that Organization’s records and descriptions of traffickers, as well as its possibilities of exchanging information between national law-enforcement agencies. China had recently co-operated with the United States and Hong Kong in the framework of ICPO/Interpol in effecting a large drug seizure and had carried out a similar operation with Thailand. He suggested that article 6, paragraph 1, subparagraph (a) should contain a specific reference to the use of the ICPO/Interpol channel of communication.

15. His delegation took the view that the “transit State” concept should be retained. Such States were easy prey for illicit traffickers and most of them were developing countries with limited financial and material resources for combating the problem. Law enforcement was a particularly difficult matter in border regions, and he expressed the hope that China would receive material and financial assistance from other countries in its efforts to combat illicit trafficking.

16. Mr. SKRLJ (Yugoslavia) said that illicit drug traffic was just one aspect of international smuggling, which also involved the movement of weapons, gold and money. Many States were affected by transit traffic, but the impact was only temporary and not of the same nature as in transit States. His delegation therefore felt that the term “transit State” should be retained.

17. Ms. GRAHAM (United States of America), replying to a question from Mr. SAVOV (Bulgaria), said that the purpose of the 7-country amendment was to highlight and draw attention to transit traffic, which was an important aspect of drug trafficking. The Committee’s mandate was to devise a comprehensive strategy to combat all aspects of drug trafficking, and the question of transit traffic must therefore be tackled. Some States were more seriously affected than others, and they had to be provided with technical co-operation and assistance—an idea contained in paragraph 5 of the amendment. The problem was not which State was a transit State, but that transit traffic reflected a growing and dangerous trend which must be suppressed. A definition of transit State would encompass virtually all States, no nation being immune to the movement of illicit substances through its territory, and would make it necessary to single out producer, consumer and trafficking States.

18. Mr. PAYE (Senegal) said that a definition of “transit traffic” would be necessary only if it was agreed that the
term “transit State” would not be used, for transit was just one aspect of illicit traffic in general. His delegation supported the original text of article 6, but was prepared to consider other wording. It was also of the view that full use should be made of ICPO/Interpol facilities for purposes of exchanging information.

19. Mr. ASAD (Pakistan) said that no State was a purely transit State, since psychotropic substances of various kinds were produced and consumed in most countries. He therefore supported the 7-country amendment because of its flexibility.

20. Mr. SAVOV (Bulgaria) said that the Pakistani representative had rightly pointed out that all States were adversely affected by transit traffic, and felt that the wording of the 7-country amendment was inconsistent with the United States representative’s comments on devising a strategy to combat illicit trafficking. His delegation, which took the view that the term transit State should not be defined because transit traffic involved drug production, transit and consumption, supported the original text of article 6.

21. Mrs. LACANLALE (Philippines) agreed with the Indian representative that the “transit State” concept was well established and opposed its replacement by the phrase “States affected by transit traffic”. Her delegation endorsed the United States representative’s view that the Committee must deal with all aspects of illicit traffic; one such aspect was the problem of transit States.

22. Mr. PALARINO (Argentina) said he was in favour of the definition of “transit State” given in document E/CONF.82/3, which enabled such States to act more efficiently in combating illicit trafficking.

23. Mrs. ADEGBOKUN (Nigeria) said that she supported the original text of article 6 which could, however, be improved. Nigeria recognized the value of bilateral agreements in law enforcement matters and efforts to eradicate illegal trafficking, and was negotiating such agreements with a number of countries.

24. She proposed that discussion of article 6, paragraph 5, should be deferred until consideration of article 6 bis had been concluded.

25. Mr. TEWARLI (India) supported that proposal.

26. Mr. STEWART (Bahamas) said that, for the reasons given by the Indian representative, he was unable to support the 7-country amendment.

27. Mr. MAROTTA (Italy) said he had no objection to the term “transit traffic”. However, it would be difficult to determine whether a given country was a transit State or not, since that depended on the extent to which it was affected by transit traffic. Most countries were also affected by drug production and consumption, and it was hard to imagine a country that was simply a transit State.

28. His delegation also considered that co-operation with ICPO/Interpol in the activities covered by article 6 was of great importance.

29. Mr. PASHA (Bangladesh) pointed out that replacement of the term “transit State” by “States affected by transit traffic” would weaken article 6. Virtually all countries were at least partially affected by illicit traffic, but not all were necessarily transit States. For that reason his delegation supported the original wording of article 6, paragraph 2.

30. Mr. SABOIA (Brazil) preferred the definition of transit State given in document E/CONF.82/3 because it gave a more narrow focus to the measures provided for in article 6 bis. The term “States affected by transit traffic” was so broad that it could cover virtually all States.

31. Mrs. MOAYEDDODIN (Islamic Republic of Iran) said that, as the “transit State” concept was recognized in article 6 bis, his delegation was unable to support the 7-country amendment.

32. Mr. GONZALEZ (Chile) suggested inserting a reference in article 6 to preventive measures to be taken.

33. Mr. BROWNING (United States of America), replying to the question from Mr. GUNBY (Turkey), said that although it might be possible to replace the term “transit State” by “transit traffic” in article 6 bis, it would be inappropriate to do so before the wording of article 6 bis had been agreed upon.

34. He supported the suggestion to defer discussion of the terms “transit traffic” and “transit State” until consideration of article 6 bis had been completed.

The meeting rose at 1 p.m.
20th meeting
Friday, 9 December 1988, at 3.30 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)


Paragraph 1

1. The CHAIRMAN invited the Committee to consider article 6 paragraph by paragraph, and recalled that it had been suggested at the previous meeting that paragraph 5 should be taken up after article 6 bis. Various amendments to paragraph 1 had already been presented: the representative of Mexico had proposed the deletion of subparagraphs (a) to (d); the representative of the Soviet Union had proposed the insertion of the phrase "on the basis of bilateral agreements" before the word "establish" in subparagraph (c); and the representative of the Netherlands had suggested adding the words "or arrangements" to that phrase.

2. Mr. GONZALEZ LOPEZ (Cuba), introducing the new subparagraph (a) bis proposed by his delegation (E/CONF.82/C.2/L.18), said that although his country was not seriously affected by illicit drug trafficking, its territorial waters and airspace were frequently violated by foreign vessels and aircraft engaged in such traffic. The coastguard services of a neighbouring State were particularly active in the detection and pursuit of such craft, which sometimes entered Cuba's national territory illegally and dumped packages containing drugs into the sea, obliging his country's authorities to search its coastline regularly. It was very important for Cuba, and for other countries in a similar situation, to prevent activities of that kind.

3. He further proposed that the wording of subparagraph (c) should be strengthened by replacing the verb "ensure" in the final sentence by "guarantee".

4. Mr. STORBECK (Federal Republic of Germany) suggested that the Soviet Union amendment to subparagraph (c), together with the subamendment proposed by the representative of the Netherlands, should be reworded to read: "on the basis of bilateral or multilateral agreements or arrangements".

5. Mr. GARCIA (Colombia) said that his country, which was experiencing great difficulties in coping with illicit drug trafficking, not only sought the co-operation of other countries, but also offered co-operation based on its own long experience. In accordance with Colombian penal legislation, criminal investigations were conducted under the authority of a judge, which would make it very difficult for his country to enter into bilateral or multilateral co-operation agreements. He would therefore prefer to retain the original wording of paragraph 1 and its subparagraphs.

6. He fully supported the Cuban amendment.

7. Mr. MAROTTA (Italy) said that the word "enquiries" in subparagraph (b) was ambiguous and suggested that it should be replaced by "intelligence activities".

8. Mr. TEWARI (India) noted that the title of article 6 failed to reflect its content and therefore suggested that it should be amended to read "Other Means of Co-operation for Law Enforcement and Training". He further proposed the amendment of the last part of subparagraph (a) to read "... its links with other criminal activities such as economic crimes and commercial frauds", and that of subparagraph (b) to read "... activities to facilitate the apprehension of traffickers, and the identification and movement of property to facilitate tracing, freezing, seizure and forfeiture".

9. Mr. GUNLEY (Turkey) suggested that in future very detailed amendments such as those just made by the Indian representative should be submitted in writing.

10. Mr. SIBLESZ (Netherlands), while agreeing in principle with the previous speaker, noted that the Committee's work would be held up if it had to wait for a written text each time an amendment was proposed.

11. The CHAIRMAN suggested that, if an oral amendment consisted of more than a few words, it should be submitted in writing to the Secretary, who would read it out. The Committee could then decide whether it could be considered at once or whether it should be circulated as a document.

12. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed with that suggestion.

13. Mr. BROWNING (United States of America) said he supported the addition of the words "on the basis of bilateral and multilateral agreements or arrangements" to subparagraph (c).

14. As regards the Cuban amendment, it would seem that its main purpose was to promote exchanges of information—a matter that was already covered by subparagraph (a). Moreover, the term "neighbouring State" might be restrictive and would require definition.

15. Mr. ZURITA (Venezuela) supported the highly constructive amendment submitted by Cuba, which would
serve a common goal. He noted that his own country had entered into co-operative agreements with a number of its neighbours, setting up joint committees to co-ordinate the measures taken by each signatory within its own territory to repress illicit drug trafficking.

16. The amendment submitted by the Netherlands (E/CONF.82/C.2/L.25) replaced the term "illicit traffic" by the words "offences, established in accordance with article 2, paragraph 1", which in his view was an improvement. However, as the phrase "having international dimensions" seemed to be more restrictive than the words "at the international level" that it replaced, he suggested that the words "that are of an international nature" might be used.

17. Mrs. ROUCHEREAU (France) endorsed the amendments submitted by the representatives of the Soviet Union and the Netherlands to subparagraph (c) and suggested the addition of the words "subject to existing or future agreements" to the end of the paragraph.

18. Mr. RABAZA (Cuba), replying to the points raised by the United States representative, said that the proposed new subparagraph (a) bis was intended to cover problems other than the exchange of information common to both Cuba and neighbouring States. Subparagraph (a) was inadequate and his delegation's amendment was designed to offer protection not merely to Cuba itself, but to all countries that happened to be in a similar geographical situation.

19. Mrs. CHAVEZ (Panama) supported the Cuban amendment which in her view was highly constructive.

20. Mr. BABAYAN (Union of Soviet Socialist Republics) said that in principle he had no objections to the Cuban amendment, but thought it might be better to replace the words "through mutual co-ordination" by "through mutual arrangements and co-ordination". He also noted that the English version referred to "drug trafficking", whereas the Russian version contained the term "narcotic drugs". It was essential to state clearly what was intended, and he emphasized that terms such as "narcotic drugs" and "psychotropic substances" should be used correctly and uniformly throughout the convention, or else reference should be made to substances in List A or List B.

21. The CHAIRMAN agreed, and suggested that the words "illicit drug trafficking" in the proposed subparagraph (a) bis might be replaced by "illicit trafficking in narcotic drugs, psychotropic substances and substances in the schedules of this Convention".

22. Mrs. ADEGBOKUN (Nigeria) said that in her view the French oral amendment was already covered by the terms submitted by the representatives of the Soviet Union and the Netherlands.

23. Mr. SIBLESZ (Netherlands) referring to the Venezuelan representative's comments on his delegation's amendment to subparagraph (b) (E/CONF.82/C.2/L.25), said that the words "having international dimensions" were intended to make it clear that the offences in question were not just domestic. He was therefore prepared to accept the Venezuelan proposal to replace the original words "at the international level" by "that are of an international nature".

24. The situation as regards the first sentence of subparagraph (c) was rather confused in view of the various amendments submitted. As he understood it, the proposed new wording now consisted of the phrase "on the basis of bilateral or multilateral agreements or arrangements". In that connection, he agreed with the Nigerian representative that the French oral amendment was redundant.

25. He also agreed with views expressed by the United States representative on the amendment submitted by Cuba. In his view, subparagraph (a) dealt adequately with the question of the exchange of information; the various purposes of such exchanges should not be specified in the convention, but defined by mutual agreement between the countries concerned.

26. Moreover, he had doubts about the scope of the obligation referred to in the final phrase of the Cuban amendment.

27. He said that the words "of an international nature" proposed by the Venezuelan representative were acceptable.

28. Mr. SABOIA (Brazil) said that his delegation had some difficulty with the amendment proposed by the French representative to subparagraph (c), since it failed to see how the sovereignty of the party on whose territory an operation was to take place could be respected subject to existing agreements.

29. While his delegation sympathized with the concept underlying the new subparagraph (a) bis proposed by Cuba, it found the language used rather complex. In that connection, most of the difficulties being encountered could well be the result of the Committee's attempt to specify modalities of co-operation which, in his view, should be laid down in bilateral or multilateral agreements and arrangements. A solution might consist in making a general reference to such agreements and arrangements that was applicable to the subparagraphs in question.

30. Mrs. ROUCHEREAU (France) said that her reservation regarding subparagraph (c) concerned bilateral and multilateral agreements which created joint teams that might lead States to abandon their sovereignty.

31. The new subparagraph (a) bis proposed in document E/CONF.82/C.2/L.18 raised various problems by referring to measures taken "in the vicinity of . . . boundaries", and her delegation agreed with previous speakers that it was inadvisable to go into detail.

32. Mr. STORBECK (Federal Republic of Germany) said that, in principle, his delegation was not opposed to the new subparagraph (a) bis proposed by Cuba. However, he felt that the mutual co-ordination of law enforcement measures to which it referred should not be confined to
neighbouring States, but extended to cover all countries of the world.

33. Mr. TEWARI (India) felt strongly that a reference to economic crimes and commercial fraud should be included in subparagraph (a) since the cost of smuggling drugs in the developing countries was being defrayed to an increasing extent by the smuggling of other items, such as gold. The proceeds were then invested in hard currency in banks and laundered.

34. Mrs. THISTLETHWAITE (United Kingdom) said that her delegation supported the changes proposed by the Netherlands in subparagraph (b) (document E/CONF.82/C.2/L.25). In general, it was in favour of a general reference to co-operation, since other forms of co-operation and training, which did not constitute mutual assistance, were usually best practised in a flexible manner.

35. Her delegation associated itself with the views expressed by the representatives of the Netherlands, Brazil and the Federal Republic of Germany concerning the scope of the obligation contained in the proposed new subparagraph (a) bis, and agreed with the United States representative that much of the new subparagraph was already covered by subparagraph (a).

36. Mr. FLORES (Ecuador) said he welcomed the proposed subparagraph (a) bis since it reaffirmed the need for mutual co-ordination between States to prevent illicit traffic. He also supported the Cuban amendment to subparagraph (c).

37. Mr. KOCH (Denmark) said that his delegation did not share the views expressed by the representative of the Federal Republic of Germany on the proposed subparagraph (a) bis since it raised a large number of complex problems that would be better discussed elsewhere. It associated itself with the views expressed by the representatives of the United Kingdom, France, the United States and the Netherlands concerning the last sentence of that subparagraph.

38. Mr. POPOV (Bulgaria) said that his delegation fully supported the proposed new subparagraph (a) bis, as amended by the Soviet Union representative.

39. The CHAIRMAN asked whether the Committee was prepared to approve the introductory wording of paragraph 1.

40. It was so decided.

41. Mr. TEWARI (India) formally proposed the addition of the words "including economic crimes and commercial frauds" to the end of subparagraph (a). His proposal was, in his opinion, justified by the discussion that had taken place in the Review Group and by the use of the words "other illegal activities" in article 2, subparagraph 3(c).

42. Mr. VALL (Mauritania) supported the Indian representative's proposal.

43. Mr. BROWNING (United States of America) said that although he understood the purpose of the Indian representative's proposal he wondered whether it was not already covered by the reference to "links with other criminal activities" or to "exchange of information concerning all aspects of illicit traffic".

44. Mr. MENDIS (Sri Lanka) associated himself with the views expressed by the United States representative.

45. Mr. TEWARI (India) said that although his delegation considered that it was very important to refer to the link between illicit traffic and other criminal activities, such as economic crimes and commercial frauds, it was willing, in a spirit of co-operation, to withdraw its proposal.

46. The CHAIRMAN asked whether the Committee was prepared to approve subparagraph (a) by consensus.

47. It was so decided.

48. Mr. SZEKELY (Mexico) said that although his delegation had reservations regarding subparagraph (a) and had proposed its deletion (E/CONF.82/3, p. 111), it had not opposed the consensus.

49. The CHAIRMAN said that views on the new subparagraph (a) bis proposed by Cuba were divided, and therefore suggested that the Cuban delegation should hold informal consultations with other interested delegations with a view to preparing a new draft.

50. Mr. POPOV (Bulgaria) said that, despite the shortcomings of the Cuban proposal, the convention would be incomplete if it failed to take its substance into account. He, for one, was prepared to help in redrafting it.

51. Mr. KOCH (Denmark) was of the view that it was too late in the day to study the complex problems raised by the Cuban proposal. He would not, however, oppose the course suggested by the Chairman.

52. Mr. SZEKELY (Mexico) supported the Cuban proposal, which concerned a real problem, of which his own country was a victim and which ought to be tackled.

53. Mrs. ROMERO (Bolivia) said that Bolivia supported co-operation on co-ordination and exchange of information and that its experience with conventions signed with Brazil and Peru had been satisfactory. If the parties to bilateral agreements were in favour of such conventions, the Cuban proposal would form a useful part of the present convention. Her delegation was satisfied with the drafting of the proposal, except for subparagraph (c), since the prior existence of bilateral agreements was essential for the authorization of the work of the joint teams mentioned in the original text.

54. The CHAIRMAN suggested that the representative of Cuba should be invited to prepare a new draft of subparagraph (a) bis with the help of representatives prepared to assist him.
55. It was so decided.

56. Mr. GARCIA (Colombia) said that his delegation was unable to support subparagraph (b) as it stood. While Colombia was prepared to request and offer all possible co-operation in the exchange of information, co-operation in conducting enquiries with respect to offences was a legal matter and would entail insuperable difficulties.

57. Mr. TEWARI (India) explained that his amendments to the third line had been intended to make it clear that the purpose of international co-operation was to facilitate the apprehension of traffickers and legal action against them, as well as the identification and determination of the whereabouts and movement of property to facilitate freezing, seizure and forfeiture.

58. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the Netherlands reformulation of subparagraph (b) in document E/CONF.82/C.2/L.25, subject to two minor amendments. He suggested that the words “on the basis of bilateral agreements and/or arrangements” should be inserted in the first line after the words “one another”, and that the first words in the fifth line should read “narcotic drugs and psychotropic substances or instrumentalities”.

59. The CHAIRMAN said he took it that the first line of subparagraph (b) would be amended by the insertion of the words proposed for subparagraph (c); namely, “on the basis of bilateral or multilateral agreements or arrangements.”

60. Mr. BABAYAN (Union of Soviet Socialist Republics) said it would be better to omit the word “multilateral”, since it could be argued that the convention itself was a multilateral instrument.

61. Mrs. ROUCHEREAU (France) said that while she could, if necessary, support the Netherlands proposal, the Soviet Union amendment raised problems. France had concluded multilateral agreements in connection with the investigation of drug problems and was therefore in favour of retaining the word “multilateral”. Mutual police assistance was also provided in investigations, but without any formal arrangements.

62. Mr. MAROTTA (Italy) said that the word “enquiries” caused him some concern, but he would not press the point so as not to obstruct the consensus that appeared to be emerging.

63. Mr. BABAYAN (Union of Soviet Socialist Republics) said that, in deference to the representative of France, he would agree to the mention of multilateral as well as bilateral agreements. Regarding the Italian representative’s difficulty with the word “enquiries”, he suggested that the representative of the Netherlands might find another suitable word.

64. Mr. WIENIAWSKI (Poland) supported subparagraph (b) as now amended, including the replacement of “illicit traffic” by “offences, established in accordance with article 2, paragraph 1 . . . “, and suggested that the question of similar change in subparagraph (a) should be referred to the Drafting Committee.

65. Mr. SIBLESZ (Netherlands), replying to points raised in the discussion, urged the Soviet Union representative to reconsider his proposed addition of the words “on the basis of bilateral agreements and/or arrangements”, which he considered unnecessary. With regard to the words “drugs” and “substances”, he felt that the precise meaning would be clear from the definition of offences that would be examined by Committee I after consideration by the working group.

66. The wording on co-operation in conducting enquiries was not an amendment by his delegation but had been taken from the original draft. Extensive discussions had revealed that the co-operation envisaged under article 6 was different from that under article 5, which dealt with legal matters. The Review Group had been unable to find a precise term but his delegation understood it to mean police co-operation.

67. Lastly, regarding the idea of replacing the words “illicit traffic” in subparagraph (b) above, he said that his delegation regarded them as constituting a generic term that was acceptable in all cases where it had not proposed an amendment.

68. Mr. SZEKELY (Mexico) disagreed with the Netherlands representative’s suggestion that the Soviet Union amendment was unnecessary.

69. Mr. GARCIA (Colombia) pointed out that, under Colombia’s legal system, an enquiry was the same as a criminal investigation. His delegation was obviously unable to accept the word “co-operation” in that context, since the judiciary was independent, could not be interfered with or directed, and was incapable of such co-operation.

70. Mr. SABOIA (Brazil) proposed the addition of the words “on the basis of bilateral and multilateral agreements or arrangements” to the end of the introductory wording of paragraph 1, after the words “in particular”, so that they would apply to all the subparagraphs.

71. Mr. BROWNING (United States of America), referring to the French representative’s comments, said that the article should include a reference to police assistance.

72. Mr. BABAYAN (Union of Soviet Socialist Republics) supported the Brazilian proposal. In view of the complex problems of national law raised by the subparagraphs, a general reference of that nature would facilitate adoption.

73. Mr. POPOV (Bulgaria) also supported the Brazilian proposal, but suggested that, in general, the word “co-operation” needed defining in the context of different economic and political systems and different societies.

74. Mr. SIBLESZ (Netherlands) supported the Brazilian proposal, on the understanding that it referred to “arrangements”.
75. The Brazilian proposal was adopted.

76. The CHAIRMAN noted that the adoption of the Brazilian proposal had removed the need for amendments in the first, third, fourth and fifth lines.

77. With regard to the Soviet Union proposal to replace the words “drugs, substances” in the fourth line of the Netherlands amendment, he suggested the wording used on previous occasions; namely, “narcotic drugs, psychotropic substances, substances in the schedules to this Convention”.

78. Mr. STORBECK (Federal Republic of Germany) disagreed with what the Chairman had said concerning the effect of the Brazilian proposal. He still had difficulties with the words “on the basis of bilateral and multilateral agreements” because there was a great deal of police co-operation, especially in Western Europe, which did not require bilateral or multilateral agreements. He would prefer the following wording: “on the basis of bilateral and multilateral agreement, if necessary, in particular . . .”.

79. Mrs. ROUCHEREAU (France) agreed with the previous speaker because police co-operation took place in France in the absence of any formal agreements or arrangements. It would be counter-productive to make such co-operation depend on agreements and arrangements, and countries that could co-operate without agreements should be able to do so. She therefore suggested that the words “if necessary” should be inserted before the words “on the basis of agreements or arrangements”.

80. Mr. BABAYAN (Union of Soviet Socialist Republics) thought that agreement had been reached on the Netherlands proposal and felt that the compromise solution was now placed in jeopardy. He saw no difficulty in envisaging co-operation on the basis of an arrangement, rather than an agreement.

81. Mr. GARCIA (Colombia) recalled why his delegation was unable to support the idea of co-operation in conducting enquiries and reaffirmed its reservation regarding the creation of joint teams.

82. Mrs. ADEGBOKUN (Nigeria) suggested that it might help certain delegations if the word “enquiries” was replaced by a phrase such as “intelligence activities”, as suggested by the Italian representative.

83. Mr. BROWNING (United States of America) said it was his delegation’s understanding that the reference to “agreements” would be satisfactory to those countries which required formal agreements. Arrangements could, of course, be of an informal nature, and he therefore understood the concern of the representatives of France and the Federal Republic of Germany.

84. Mr. SZEKELY (Mexico) said that, as his delegation’s position was similar to that of Colombia, it would find it difficult to accept the paragraph.

85. Mr. STORBECK (Federal Republic of Germany) said that the wording proposed would be acceptable to his delegation if it was the understanding that an agreement could include informal agreements.

The meeting rose at 6.25 p.m.

21st meeting
Saturday, 10 December 1988, at 10.35 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 6 (continued)

Paragraph 1 (continued)

1. Mrs. ROUCHEREAU (France) said that her delegation had joined the consensus on the Brazilian amendment to the introductory wording to article 6, paragraph 1, on the understanding that the arrangements mentioned in the Brazilian wording might be informal as well as formal.

2. The CHAIRMAN said he took it that the Committee approved the introductory wording to article 6, paragraph 1, as proposed in document E/CONF.82/3 and amended at the previous meeting in accordance with the Brazilian oral proposal (E/CONF.82/C.2/SR.20, paras. 70, 75).

3. It was so decided.

Subparagraph (b)

4. The CHAIRMAN invited the Committee to consider the following text for paragraph 1(b):

“Co-operate with one another in conducting enquiries with respect to offences established in accordance
with article 2, paragraph 1, having an international nature, the identification, whereabouts and activities of suspected persons and the movement of proceeds derived from, or narcotic drugs, psychotropic substances or substances in the schedules of this Convention or instrumentalities used in, or intended for use in, the commission of such offences.”

5. Mrs. ROUCHEREAU (France) said that her delegation would prefer to retain the term “traffickers” used in the basic proposal rather than include the words “suspected persons”, because it was sometimes useful to place known traffickers under preventive surveillance even if they were not suspects in the legal sense. Her delegation suggested the insertion of the words “and property” after the word “proceeds”.

6. Mrs. ADEGBOKUN (Nigeria) said that the use of the term “suspected persons” would simplify the work of law enforcement agencies, because by the time a person was legally declared a trafficker, he might have been able to dispose of proceeds and instrumentalities which would otherwise be recovered.

7. Mr. PAYE (Senegal) proposed the replacement of the term “suspected persons” by the phrase “persons likely to be involved in trafficking”.

8. Mr. MAROTTA (Italy) said that the term “trafficker” might limit the effectiveness of police activities. He proposed the words “traffickers or persons suspected of being traffickers”. His delegation could also support the suggestion of the Senegalese representative.

9. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation approved the wording proposed in document E/CONF.82/C.2/L.25 with the changes suggested by France and Italy. It disagreed with the Senegalese representative’s proposal, which might have far-reaching legal implications, because the phrase “likely to be involved in trafficking” could be applied indiscriminately.

10. Mr. BOBIASZ (Canada) said that he preferred the term “suspected persons” because of the reference to offences established in accordance with article 2, paragraph 1. It was not yet clear whether those offences would be ultimately characterized as trafficking offences or defined simply in terms of activities which must be made criminal offences. If the words “suspected persons” were used, no ambiguity would arise as to whether all or some of those offences were referred to.

11. Mr. SIBLESZ (Netherlands) said that his delegation had proposed the words “suspected persons” instead of the term “traffickers” precisely for the reasons explained by the previous speaker.

12. Mr. BROWNING (United States of America) said that his delegation favoured a wording with respect to traffickers that made reference to suspected persons.

13. Mr. BABAYAN (Union of Soviet Socialist Republics) proposed the words “traffickers or persons suspected to be involved in trafficking”.

14. Mr. SABOIA (Brazil) supported that proposal.

15. The CHAIRMAN invited the Committee to approve the text of paragraph 1(b) which he had read out earlier, with the changes proposed by the representatives of France and the Soviet Union.

16. It was so decided.

17. Mrs. de la GARZA (Mexico) said that her delegation maintained the reservations it had expressed concerning paragraph 1(b) (E/CONF.82/C.2/SR.20, para. 84).

Subparagraph (c)

18. The CHAIRMAN invited the Committee to approve paragraph 1(c) as proposed in document E/CONF.82/3.

19. It was so decided.

20. Mrs. de la GARZA (Mexico) said that her delegation’s reservations about subparagraph (b) also applied to subparagraph (c).

Subparagraph (d)

21. Mr. PAYE (Senegal) suggested replacing the word “transfer” by the word “exchange”, so as to underscore the idea of reciprocity.

22. Mr. SAVOV (Bulgaria) supported the proposal of the previous speaker.

23. Mr. BROWNING (United States of America) said that the word “exchange” might be ambiguous. In some cases, only one country might need a particular sample. His delegation proposed the replacement of the word “transfer” by the word “provide”.

24. Mr. PAYE (Senegal) said he would accept the United States proposal if the words “at the request of one Party” were added.

25. Mr. MAROTTA (Italy) agreed with the United States suggestion. He pointed out that if an agreement on the subject already existed, as contemplated in the introductory wording to paragraph 1, there was no need to add the words “at the request of one Party”, as suggested by the Senegalese representative.

26. Mrs. THISTLETHWAITE (United Kingdom) agreed with the previous speaker that the introductory wording covered the idea embodied in the second suggestion of the Senegalese representative.

27. Mr. PAYE (Senegal) said that the transfer of samples should not be automatic, as the introductory wording implied, but should be requested case by case.

28. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the introductory wording stated that
co-operation would be on the basis of bilateral or multilateral agreements or arrangements, and the French delegation had asked to place on record its understanding that such arrangements might be informal as well as formal. In those circumstances, the result sought by the representative of Senegal would be catered for.

29. Mrs. ROUCHEREAU (France) said that the words “when appropriate” in subparagraph (d) implied an agreement between States. That should meet the point raised by the Senegalese representative.

30. Mr. PAYE (Senegal) withdrew his delegation’s suggestions.

31. The CHAIRMAN said he took it that paragraph 1(d) as proposed in document E/CONF.82/3 was acceptable to the Committee.

32. It was so decided.

Paragraph 2

33. Mr. SIBLESZ (Netherlands) amended his delegation’s proposal for subparagraph (d) in document E/CONF.82/C.2/L.25 to read as follows:

“Detention and monitoring of the flow of proceeds derived from, and narcotic drugs, psychotropic substances or substances in the schedules under this Convention and instrumentalities used in, or intended for use in, the commission of offences established in accordance with article 2, paragraph 1”.

34. Mrs. ADEGBOKUN (Nigeria) inquired why customs and law enforcement were mentioned separately in the introductory wording to paragraph 2.

35. Mrs. ROUCHEREAU (France) approved the Netherlands proposal for subparagraph (a) and could accept its proposal for subparagraph (d) if the words “and property” were added after the word “proceeds”.

36. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the Netherlands representative’s amendment was acceptable.

37. Mr. BROWNING (United States of America) also supported the Netherlands representative’s amendment. In order to bring the text of the amendment into line with the provisions on confiscation, and drawing upon the French suggestion, his delegation proposed the amendment of subparagraph (e) to read: “Methods used for the concealment, transfer or disguise of such proceeds, property or instrumentalities”.

38. In reply to the question raised by the Nigerian representative, he said that the word “customs” had been included in order to ensure that customs personnel would benefit from the forms of assistance referred to in paragraph 2.

39. Mr. TEWARIV (India) agreed with the United States representative’s comment about the word “customs”. In a number of countries, particularly developing ones, personnel required training in testing and analysing drugs. His delegation therefore suggested that the needs of personnel in that respect should be specified in the introductory wording. He also suggested that the phrase “charged with the suppression of the illicit traffic” should be replaced by the words “responsible for the suppression of the illicit traffic”.

40. His delegation approved the proposals for paragraph 2 in document E/CONF.82/C.2/L.25, as orally amended by its sponsor, and the United States suggestion to insert the word “transfer” in subparagraph (e). It did not believe that the addition of the term “property” suggested by the representative of France was necessary, as the notion of property already appeared in a similar context in article 3.

41. His delegation proposed that discussion of the term “transit State” should be deferred until the consideration of article 6 bis had been concluded.

42. Mr. SIDI (Mauritania) said that the word “customs” in the introductory wording to paragraph 2 should be deleted, because customs officials had always had a law enforcement role. His delegation supported the Netherlands amendment, but would like the word “déguiser” in the French version of subparagraph (e) to be replaced by the word “masquer”, because in customs usage the two terms had different meanings and the latter would be more appropriate in subparagraph (e).

43. Mr. SUKANDAR (Indonesia) said that his delegation was in favour of deferring the discussion of paragraph 2(b) until the Committee had concluded its work on article 6 bis.

44. Mrs. THISTLETHWAITE (United Kingdom) said that the inclusion of the term “customs” in paragraph 2 had already been debated in the open-ended intergovernmental expert group. Although the notion of law enforcement officers probably included those customs officers charged with investigating and suppressing illicit traffic, the expert group had thought that the inclusion of the term “customs” would clarify the position for some States.

45. With regard to the Indian suggestion about the term “transit State”, it would be best if the notions of transit State and transit traffic were discussed under article 6.

46. Mr. MAROTTA (Italy) agreed with the comments of the United Kingdom representative. In order to avoid ambiguity in the use of the term “customs”, his delegation proposed placing it at the end of the first sentence of the introductory wording, which would then read: “... law enforcement and other personnel charged with the suppression of the illicit traffic, including customs”.

47. Ms. GRAHAM (United States of America) also agreed with the United Kingdom representative. The issue of transit traffic was very much a part of article 6 and should be considered there.

48. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed with the Italian representative’s suggestion
regarding the term “customs”. It was important to retain the term in the introductory wording because customs personnel had an essential role to play in suppressing illicit traffic.

49. With regard to the Indian suggestion to defer consideration of the term “transit State”, he proposed that the Committee should approve paragraph 2 on the understanding that if article 6 bis was formulated in such a way that the paragraph needed amendment, the Committee would revert to it.

50. Mr. PALARINO (Argentina) said that, whereas the definition of the term “transit State” proposed in document E/CONF.82/3 made specific reference to those States adversely affected by illicit traffic, the definition of the term “transit traffic” proposed in document E/CONF.82/C.2/L.27 and Corr.1 spoke of the objective fact of the movement of drugs through States that were not the ultimate destination of those drugs. Clearly two different issues were involved, and one definition did not directly affect the other. Nevertheless, there was a connection between the two elements and article 6 bis, and his delegation therefore endorsed the view expressed by India and Indonesia that the matter should be dealt with under the latter article.

51. Mr. QI Baoshin (China) suggested that, in the introductory wording, the phrase “including training of customs and other personnel” should be inserted at the end of the first sentence.

52. Mr. TEWARI (India) said that paragraph 2 should be approved without any change in the reference to transit States.

53. Mr. STEWART (Bahamas) agreed.

54. The CHAIRMAN invited the Committee to consider the following wording for article 6, paragraph 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 countermeasures;

(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 derived from, and narcotic drugs, psychotropic substances and substances in the schedules of this Convention and instrumentalities used in, or intended for use in, the commission of offences established in accordance with article 2, paragraph 1;

(e) Methods used for the concealment, transfer or disguise of such proceeds, including property and instrumentalities;

(f) Collection of evidence;

(g) Control techniques in free trade zones and free ports;

(h) Modern law enforcement techniques”.

55. Mr. BABAYAN (Union of Soviet Socialist Republics) approved paragraph 2 as read out by the Chairman.

56. Mrs. ADEGBOKUN (Nigeria), referring to subparagraph (e), said that it might be better to place the word “transfer” before the word “concealment” or after the word “disguise”, since concealment and disguise were related notions. Also, since the definition of “proceeds” approved by Committee I included the notion of property, it was unnecessary to include the word “property” in subparagraph (e). Nor would it make sense in subparagraph (d), which rightly referred only to “proceeds”.

57. Mrs. ROUCHEREAU (France) said that her delegation had proposed the insertion of the words “and property” after the word “proceeds” in subparagraph (d). However, if the Committee decided that the term “proceeds” included the notion of property, her delegation would withdraw that proposal.

58. Mr. BOBIASZ (Canada) said his delegation approved paragraph 2 as read out by the Chairman.

59. Mr. BROWNING (United States of America) agreed with the French representative that the term “property” should be included. It would cause no harm and would bring the text into line with other provisions of the convention. His delegation supported the Soviet representative’s procedural suggestion concerning the term “transit State”.

60. The CHAIRMAN said he took it that the Committee approved the wording he had read out for paragraph 2 with the change suggested by France, on the understanding that, if necessary, the Committee would reconsider the use of the term “transit State” in subparagraph (b) after the conclusion of its work on article 6 bis.

61. It was so decided.

The meeting rose at 1.15 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 6 (continued)

Paragraphs 2 and 3

1. Mr. SUKANDAR (Indonesia) suggested the insertion of the words “research and” before “training programmes” in paragraph 3, since Indonesia attached great importance to research activities in combating illicit trafficking.

2. Mr. TEWARI (India) and Mr. BABAYAN (Union of Soviet Socialist Republics) supported that suggestion.

3. Mr. ASAD (Pakistan) proposed the deletion of the phrase “in the areas referred to in paragraph 2” after “expertise” in paragraph 3 in view of its restrictive nature.

4. Mr. BROWNING (United States of America) supported that proposal.

5. With regard to the Pakistan representative’s proposal, he pointed out that deletion of the reference to paragraph 2 in an article dealing with law enforcement cooperation might give a mistaken impression. Paragraph 2 was concerned with law enforcement, co-operation and assistance, and the reference was intended to specify the areas that should be given special attention.

6. Mr. SIBLESZ (Netherlands), referring to the Pakistan representative’s proposal, noted that programmes would not be restricted to the areas enumerated in paragraph 2 provided that they were concerned with co-operation of that nature.

7. Mr. ASAD (Pakistan) said that, in the light of the observations of the United States and the Netherlands representatives, he would withdraw his proposal.

8. The CHAIRMAN suggested that the Committee might approve paragraphs 2 and 3 on the understanding that it could revert to the matter of “transit States” following consideration of article 6 bis.

9. It was so decided.

Paragraph 4 (continued)

10. Mrs. de la GARZA (Mexico) said that the Canadian and Mexican delegations proposed the amendment of paragraph 4 to read as follows:

“The Parties shall facilitate effective co-ordination between their competent national agencies and services and promote, on the basis of bilateral or other agreements, arrangements or practices, the exchange of personnel and other experts”.

The purpose of that joint amendment was to eliminate a number of ambiguities in the existing text.

11. The CHAIRMAN wondered whether it was necessary to repeat the words “on the basis of bilateral or other agreements, arrangements or practices”, since the Committee had already included similar wording in the introductory sentence of article 6, paragraph 1.

12. Mrs. de la GARZA (Mexico) said that that wording referred only to paragraph 1, and should therefore be repeated in paragraph 4.

13. Mr. TEWARI (India) suggested that paragraph 4 should be divided into two so as to reflect the two separate ideas it contained. It would read as follows: “The Parties shall facilitate effective co-ordination between their competent national agencies and services. They shall also consider, where appropriate, . . . ”.

14. Mr. SABOIA (Brazil) said his delegation supported the joint amendment.

15. Mr. GONZALEZ (Cuba) said that his delegation would withdraw its amendment (E/CONF.82/C.2/L.18) in favour of the joint amendment. However, it proposed the addition of the words “In appropriate cases,” at the beginning of paragraph 4.

16. Mr. POULIOT (Canada) felt that the reference to the posting of liaison officers should be deleted since it limited the scope of the provision. Such postings on a mutually acceptable basis were important, but exchanges of personnel and experts, particularly for purposes not directly connected with enforcement, were equally vital. Indeed, the Parties might be more inclined to consider arrangements for the exchange of other personnel and experts in the absence of a specific reference to liaison officers.

17. Mr. SIBLESZ (Netherlands) said that the posting of liaison officers was an extremely effective way of combating illicit traffic. The reference to liaison officers in the text was not intended to oblige Parties to use a particular method, but was simply an example of the possibilities of co-operation offered by paragraph 4.

18. The Indian representative’s proposal to split the paragraph into two was acceptable.

19. Mr. BROWNING (United States of America) emphasized that liaison officers had proved their worth, and
were an essential part of the co-operation and co-ordination referred to repeatedly in the article. They had also been recognized as an extremely valuable law enforcement tool by experts participating in the open-ended expert group.

20. He therefore suggested that it might be more appropriate to refer to them in a new subparagraph of paragraph 1, reading as follows:

"They shall, on the basis of bilateral or multilateral agreements or arrangements, in particular: facilitate the effective co-ordination between their competent national agencies and services and promote the exchange of personnel and other experts, which may include the posting of liaison officers".

21. Mr. MAROTTA (Italy) was in favour of retaining the reference to liaison officers and supported the United States representative’s suggestion.

22. Mrs. ADEGBOKUN (Nigeria) associated her delegation with the comments of the Netherlands and Indian representatives and supported the United States representative’s suggestion. Nigeria had benefited greatly from the activities of liaison officers and favoured retention of the reference to them.

23. Mr. GARCIA (Colombia) explained that, as his country’s legal system made no provision for liaison officers, his delegation would have to enter a reservation if the reference to them was retained. He supported the joint amendment.

24. Mrs. THISTLETHWAITE (United Kingdom) said that her delegation agreed with the Netherlands and United States representatives concerning the need to retain the reference to liaison officers. Their posting in the United Kingdom had enabled large quantities of narcotics to be seized.

25. Mr. CARAUT (France) supported the Netherlands and United States proposals. Liaison officers posted in France had also been instrumental in seizing large quantities of narcotics. More recently, the United States, the United Kingdom and France, joining forces, had thwarted a money-laundering scheme; without liaison officers, that operation would have been impossible.

26. Mr. ASAD (Pakistan) said that the posting of liaison officers in his country had been of enormous assistance in combating illicit trafficking, and his delegation therefore supported retention of the reference to them.

27. Mr. FALLAS (Costa Rica) also favoured retaining the reference to liaison officers, without whom Costa Rica would not have made much headway in combating illicit trafficking.

28. Ms. BERKE (Sweden), speaking on behalf of the Nordic countries, agreed with those delegations that wished to retain the reference to liaison officers in paragraph 4. The co-ordinated liaison officer system in the Nordic countries had been very effective.

29. Mr. BABAYAN (Union of Soviet Socialist Republics) said that by specifying the bilateral or multilateral basis of liaison arrangements, it was understood by implication that no country was compelled to accept such postings.

30. Mrs. de la GARZA (Mexico) said that the joint amendment did not exclude the possibility of co-operation through liaison officers. However, if a specific reference was made to liaison officers, a variety of other forms of co-operation would also have to be mentioned.

31. Mr. TORDAL (Norway) said that his delegation associated itself with those that had spoken in favour of retaining the reference to liaison officers, whose work had been of great value.

32. Mr. WETUNGU (Kenya) said that his delegation supported the joint amendment.

33. He suggested that the difficulty experienced by those countries wishing to retain the reference to liaison officers could be overcome by inserting the words "including the posting of liaison officers" between "exchange of personnel" and "and other experts" in paragraph 4.

34. Mr. MENDIS (Sri Lanka) said his delegation also favoured retention of the reference to liaison officers. It was his country’s experience that results had been achieved by liaison officers where other international machinery had failed.

35. Mr. STORBECK (Federal Republic of Germany) said that the posting of liaison officers was an excellent way of combating international drug trafficking, and his delegation wished to see the reference to them retained.

36. Mr. JING Ming (China) and Mr. SIDI (Mauritania) were also in favour of retaining that reference.

37. Mr. RIZVI (International Criminal Police Organization) recalled that the idea of liaison officers had been developed by ICPO/Interpol in the early 1970s. Their posting in numerous countries, on the basis of bilateral and multilateral agreements had proved effective, and his Organization intended to expand the practice.

38. Mr. PAYE (Senegal) supported the reference to liaison officers, whose services were invaluable, and recalled that their use had been recommended by the most recent General Assembly of ICPO/Interpol.

39. Mr. WIENIAWSKI (Poland) noted that paragraph 4 referred to various types of co-operation in the form of exchanges of experts and personnel. As co-operation had to be based upon bilateral or multilateral agreements, his delegation did not oppose a specific reference to liaison officers.

40. Mr. SAHRAOUI (Algeria) said that his delegation did not oppose the posting of liaison officers on the basis of "bilateral...agreements". However, the words "or other" after "bilateral" in paragraph 4 implied multilateral...
agreements, and he noted that a country's ratification of the multilateral convention under consideration might preclude its entering into a bilateral agreement.

41. Mr. CHYANG (Cameroon) said that his delegation was also in favour of retaining the reference to liaison officers. Indeed it was difficult, in the framework of ICPO/Interpol, to obtain precise information or coordinate activities without such officers, who provided immediate and invaluable on-the-spot information.

42. Mrs. de la GARZA (Mexico) thanked the Cuban delegation for withdrawing its amendment and proposed the following rewording of paragraph 4:

"In appropriate cases, the Parties shall facilitate effective co-ordination between their competent national agencies and services and promote, on the basis of bilateral or other agreements, arrangements or practices, the exchange of personnel or other experts, including liaison officers".

43. Mr. BROWNING (United States of America) wondered whether the exchange of personnel referred to in the joint amendment should be interpreted as being reciprocal or unilateral.

44. Referring to the Cuban representative's proposal, he felt that, in the light of the safeguard already contained in the provision, it was unnecessary to add the words "In appropriate cases".

45. His delegation proposed the following rewording of the joint amendment, to be inserted in paragraph 1 as a new subparagraph:

"They shall, on the basis of bilateral or multilateral agreements, in particular: facilitate effective co-ordination between their competent national agencies and services and promote the exchange of personnel and other experts, which may include the posting of liaison officers".

However, if it was the consensus view that paragraph 4 should stand alone, his delegation would not object.

46. Mr. POULIOT (Canada) said that he supported the United States proposal in a spirit of compromise.

47. Mrs. de la GARZA (Mexico) said that her delegation could agree to the United States delegation's proposal as a compromise, but had reservations about incorporating it in paragraph 1 as a subparagraph.

48. Mr. BROWNING (United States of America) said that his proposal could stand as a separate paragraph if it was shortened to begin with the words "The Parties shall facilitate . . .

49. Mr. GONZALEZ (Cuba) said that either paragraph 4 could be retained, which implied accepting the joint amendment and starting the paragraph with the words "In appropriate cases", or the paragraph could be inserted under paragraph 1, in which case his delegation would not insist on the introductory words "In appropriate cases".

50. Mr. SIBLESZ (Netherlands) said that he was not in favour of the Cuban suggestion to add the words "In appropriate cases", which unfortunately suggested an ad hoc approach; in any event such co-operation would inevitably take place only where appropriate. He preferred the proposal by the United States delegation.

51. Mrs. de la GARZA (Mexico) said that despite its continuing reservations, her delegation did not intend to stand in the way of a consensus on including paragraph 4 in paragraph 1.

52. The CHAIRMAN read out the revised text which it was proposed should be inserted in paragraph 1 as subparagraph (e):

"They shall facilitate effective co-ordination between their competent national agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers".

53. Mr. TEWARI (India) said that his delegation agreed with the suggestion of the United States representative to insert paragraph 4 in paragraph 1 and to retain the reference to the posting of liaison officers.

54. Mr. SABOIA (Brazil) said that his delegation could accept the inclusion of paragraph 4 in paragraph 1. However, it preferred retaining the idea contained in the original wording of paragraph 4, and therefore proposed the insertion of "where appropriate" between "including" and "the posting of liaison officers".

55. Mr. GARCIA (Colombia) reiterated his Government's reservations concerning the reference to the posting of liaison officers.

56. Mr. STORBECK (Federal Republic of Germany) asked whether there was a need for reciprocity in the posting of liaison officers.

57. Mrs. de la GARZA (Mexico) said that the cooperation referred to would clearly be reciprocal in nature.

58. Mrs. THISTLETHWAITE (United Kingdom) said that reciprocity was not inevitable, but a matter which the Parties could consider and agree upon between themselves.

59. Mr. CARAUT (France) agreed with the United Kingdom representative. Reciprocal exchanges could be arranged on the basis of bilateral agreements. France had liaison officers in a number of countries which had not posted any in France.

60. The CHAIRMAN said he took it that the Committee was prepared to approve the revised text of paragraph 4 he had read out, as amended by the Brazilian representative, and include it in paragraph 1 as subparagraph (e).
61. **It was so decided.**

**Article 6 bis**

62. Mr. BABAYAN (Union of Soviet Socialist Republics) said that both article 6 bis in its original form and the 12-country amendment (E/CONF.82/C.2/L.28) were acceptable.

63. Mr. JING Ming (China) said that his delegation favoured the 12-country amendment.

64. Mr. PASHA (Bangladesh) supported the wording of the 12-country amendment, and particularly that of paragraph 3. A number of developing countries, including his own, needed financial and technical assistance to cope with well-organized international criminals who had enormous resources at their command, and international co-operation could be meaningful only on the basis of bilateral and multilateral treaties, agreements or arrangements.

65. Mr. GARCIA (Colombia) specifically supported the idea of assisting and co-operating with transit States contained in the 12-country amendment.

66. Mr. ASBALI (Libyan Arab Jamahiriya) felt that paragraph 3 of the 12-country amendment should be incorporated in the introductory paragraph. Moreover, the Parties and regional and international organizations should be called upon to support and assist States affected by transit traffic, and paragraph 2 should provide that financial assistance must be increased.

67. Mr. ABUTALIB (Saudi Arabia) proposed that the word “undertake” in paragraphs 1 and 2 of the 12-country amendment should be replaced by the word “seek”.

68. The CHAIRMAN suggested that the Committee might wish, in connection with its examination of article 6 bis, to consider the definition of “transit State” given in article 1.

69. Mr. SIBLESZ (Netherlands) said that that definition was vague and might cause difficulties in practice. His delegation preferred the replacement of the term “transit State” by the expression “State affected by transit traffic”, as suggested in E/CONF.82/C.2/L.27.

70. Mr. TEWARI (India) reviewed the evolution of the term “transit State”, which had been used in many United Nations documents for a number of years and had been part of article 6 bis from the outset. His delegation preferred the term “transit State” to “transit traffic”.

71. Mr. MAHASARANOND (Thailand) said that the definition in article 1 should be amended so as to take into account the fact that a State might be a major producer or manufacturer of narcotic drugs or psychotropic substances at the same time that it was adversely affected by illicit traffic in transit through its territory.

72. Mr. POPOV (Bulgaria) wondered what was meant by “States affected by transit traffic”, since all countries in the world were affected by such traffic but not all were transit States. Furthermore, some transit States were also producers of narcotic drugs.

73. Mr. BABAYAN (Union of Soviet Socialist Republics) said that the term “transit State”, which had been used by the Committee for years, denoted a State through which a shipment of illicit narcotics passed on its way from that shipment’s State of origin to the State of destination. A transit State was not necessarily adversely affected by such operations; on the contrary, it might even benefit from such shipments by levying duties on them. A transit State might also itself be a producer of narcotic drugs, but that was irrelevant. His delegation’s definition of the term would be “a State through the territory of which illicit narcotic drugs and psychotropic substances were moved and which was not the final point of destination of those substances or the place of their origin”.

74. It would then be necessary to decide not whether a given State was a producer but simply to determine that that State was neither the place of origin nor the place of ultimate destination of a given illicit shipment.

75. Mrs. XARLI (Greece) said that only paragraph 3 of the 12-country amendment was acceptable to her delegation.

76. Mr. FALLAS (Costa Rica) said that a transit State was clearly affected by the illicit movement of drugs through its territory. Parts of shipments might be consumed locally and, in view of the enormous sums of money involved, the corruption of domestic officials became a problem. Such illicit shipments were a threat to the health, economy, national security and moral integrity of the transit State, as well as to the health of its population. The proposed definition, while not ideal, should therefore be retained.

77. Mr. SUKANDAR (Indonesia) said he was in favour of retaining the term “transit State” and its definition as given in article 1.

_The meeting rose at 1.05 p.m._
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)


1. Mr. RAMESH (India) said that his delegation considered the "transit State" concept to be of crucial importance, particularly as most such States were developing countries. The Indian definition of a transit State was a State affected by illicit traffic in narcotic drugs and psychotropic substances in transit through its territory, and he emphasized that any wording adopted should make a clear distinction between production, consumption and transit.

2. Mr. STEWART (Bahamas) associated his delegation with the views expressed by the Indian representative.

3. Transit States deserved adequate mention because they suffered in two ways: huge amounts of money had to be spent on the interdiction effort, and a certain proportion of the drugs in transit invariably remained and were consumed in the transit State, thus creating major problems connected with rehabilitation and drug education.

4. Mr. WIJESEKERA (Sri Lanka) said that he subscribed wholeheartedly to the views expressed by the USSR representative regarding the transit State concept and considered Variant A on page 50 of document E/CONF.82/3 to be untenable.

5. Mr. SIBLESZ (Netherlands) said he found it difficult to reply to specific questions posed by the Bulgarian representative in the absence of any definition of a transit State. The definition presented on page 50 of document E/CONF.82/3 was indeed rather nebulous.

6. The USSR representative's suggested definition of a transit State as a State through the territory of which illicit narcotic drugs and psychotropic substances were being transferred without that particular State being either the point of destination or the point of origin of that particular cargo was very useful and could be used as a basis.

7. Mrs. ADEGBOKUN (Nigeria) said that transit States should most certainly be mentioned in the convention. However, as the definition given in document E/CONF.82/C.2/L.27 was too broad she was in favour of the original wording of article 6 bis, pending further consideration of the Variant A on page 50 of document E/CONF.82/3.

8. Mrs. ROUCHEREAU (France) said that the USSR representative's proposed definition of a transit State was clearer than the others that had been suggested, and noted that the term had never been defined in previous conventions. However, she wondered whether there was any point in making a theoretical distinction between producing, consumer and transit States.

9. Mr. PALARINO (Argentina) said that the Committee's aim should be to provide a clear definition of the situation of States occupying an intermediate position between producer and consumer countries. He therefore proposed the inclusion of both definitions: that of a transit State as a State that was adversely affected by transit traffic through its territory, and that of the illicit movement of narcotic drugs, as set out in document E/CONF.82/C.2/L.27.


11. Mr. POPOV (Bulgaria) endorsed the views of the USSR representative.

12. Referring to the discussion at the previous meeting on the replacement of the words "transit States" by the words "States affected by transit traffic", he noted that, strictly speaking, there were no transit States but rather States affected by transit traffic as regards the final destination and/or the final consignee.

13. He agreed with the French representative's proposal and emphasized that what was needed was a very simple definition of a transit State.

14. Mr. ASSADI (Islamic Republic of Iran) said that his delegation saw no logical reason why the definition of "transit State", which had been the subject of lengthy discussions in the Expert Group, should be replaced.

15. Mr. MAROTTA (Italy) said it was virtually impossible to produce a theoretical definition of a transit State. What was needed was an operational, practical definition, and the USSR representative's proposal was very useful in that connection.

16. Mr. GUNEY (Turkey) said that, whereas the term "transit State" was widely used in existing conventions on narcotic drugs and psychotropic substances, the concept of "States affected by transit traffic" introduced a very subjective element and could be interpreted in different ways. Unless it was agreed to retain both terms, his delegation would prefer to use "transit State".

17. Mr. EDOSA (Ethiopia) said that his delegation associated itself with the views of the Indian representative and supported the wording of article 6 bis as set out...

18. Ms. GRAHAM (United States of America) said that, subject to certain modifications, the definition proposed by the USSR representative might be generally acceptable.

19. The CHAIRMAN requested the USSR representative to read out his proposed definition.

20. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his definition of a transit State would be a State through the territory of which illicit narcotic drugs and psychotropic substances were moved and which was not the final point of destination of those substances or the place of their origin.

21. Mr. PALARINO (Argentina) failed to see any substantial difference between the USSR proposal and the definition of transit traffic in document E/CONF.82/C.2/L.27. His delegation felt that the definition of a transit State should specifically refer to the adverse effects of such traffic on that State.

22. Mr. TEWAR (India) supported the USSR representative’s definition. The question of defining transit traffic should arise only when that term was used in article 6 bis, and his delegation had strong reservations about its use in that article.

23. Mr. MAROTTA (Italy) said he found the USSR representative’s definition to be sufficiently objective and neutral.

24. Mr. ALY OULD SIDI (Mauritania) said that the USSR’s definition was acceptable, subject to the possible addition of a reference to substances in Lists A and B after the reference to psychotropic substances.

25. Mr. GUNBE (Turkey) also supported the USSR’s proposal.

26. Mr. MENDIS (Sri Lanka) suggested a few drafting changes in the USSR’s proposal, with which he was in complete agreement, and which would then read “a State through the territory of which illicit narcotic drugs or psychotropic substances were moved and which was neither the place of origin nor the final destination of such substances.”

27. Ms. TSU TUAN (Malaysia) said that her delegation supported the definition of transit traffic given in document E/CONF.82/C.2/L.27. As regards the term “transit State”, however, it preferred the reference in document E/CONF.82/C.2/L.30 to a State “particularly affected by transit traffic”.

28. Mr. STEWART (Bahamas) accepted the definition proposed by the USSR representative as modified by the Mauritanian representative.

29. Mr. OSEI (Ghana) said that his delegation could see nothing wrong with the original draft of the definition of transit State on page 50 of document E/CONF.82/3.

30. Mr. PALARINO (Argentina) proposed the addition of the words “and are adversely affected by this transit traffic” to the end of the definition proposed by the USSR representative.

31. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he had tried to produce an objective, neutral and specific formulation of the basic aspects that together characterized the transit State. Special circumstances could only confuse matters, and to exclude a group of States from the definition, for example by the addition of a reference to States that were adversely affected by illicit traffic, would be unjustified. Indeed, some States were not adversely affected by illicit traffic and the proposed definition should cover all cases. The Argentine representative’s amendment would only impair the definition and introduce further difficulties.

32. Mrs. ROUIHEREAU (France) agreed with the USSR representative and supported his proposed definition. The Argentine amendment introduced a vague notion which would make the definition difficult to understand.

33. Mr. SIBLESZ (Netherlands) shared the views of the USSR and French representatives. A further argument against the Argentine amendment was that it seemed to suggest that there were, in fact, States that should be considered as transit States in the sense of the proposed definition but which would not be adversely affected by transit traffic in illicit drugs. The basic purpose of the definition was to facilitate co-operation in law enforcement, effective prevention and drug interdiction.

34. Mr. RUIZ CABANAS (Mexico) supported the USSR proposal which took into account the main elements of the problem. However, as all countries were or would be affected by transit traffic, the Argentine amendment was also useful, particularly as it was closely related to what the Committee had approved in article 6 at the previous meeting. It was important to recognize the special nature of the problems faced by transit States and to indicate that, if assured of international co-operation, they would be able to deal with them.

35. Ms. XARLI (Greece) supported the Argentine amendment. In the sense given to the article by the USSR representative any State could be a transit State, and the obvious question that arose was to which States would article 6 bis be applied.

36. Mr. CZEPURKO (Poland) supported the definition proposed by the USSR representative, but felt that the Argentine representative’s amendment raised difficulties. For example, what did “adversely affected” mean? And when and when not was a State adversely affected?

37. Mr. FALLAS (Costa Rica) supported the Argentine amendment, which would highlight the fact that countries that had no production or consumption problems were nevertheless affected because they were transit States.
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And in any event some of the drugs in transit inevitably remained and were consumed in such States.

38. Mr. BABAYAN (Union of Soviet Socialist Republics) emphasized that he had avoided any reference to special situations in his proposal since they would have complicated the definition and made it harder to understand and apply.

39. Mr. RAMESH (India) suggested that if the Committee was unable to achieve a consensus on the inclusion of a reference to adverse effects in the definition, it should concentrate on endorsing the substantive parts of article 6 bis.

40. Mr. PALARINO (Argentina) withdrew his proposal but might revert to it when article 6 bis was considered.

41. The CHAIRMAN suggested that any points concerning transit States and those adversely affected should be included in the body of article 6 bis and that the Committee should adopt the definition of transit States proposed by the USSR and amended by Sri Lanka.

42. It was so decided.

43. Mr. SIBLESZ (Netherlands), speaking on behalf of the sponsors, withdrew the proposal in document E/CONF.82/C.2/L.27 and Corr.1. In view of the decision just taken, they had agreed to work on the basis of the USSR definition.

Article 6 bis (continued)

44. The CHAIRMAN invited the Committee to continue its consideration of the substance of article 6 bis.

45. Mr. BOURESSLI (Kuwait) considered that the word "undertake" in paragraphs 1 and 2 of both the original draft and the proposal in document E/CONF.82/C.2/L.28 was too restrictive, especially as there were financial implications, and suggested that it should be replaced by wording such as "Parties can . . ." or "Parties may . . .". He endorsed the idea put forward by the Libyan and Saudi Arabian representatives at the preceding meeting.

46. Mr. SIBLESZ (Netherlands), introducing his delegation's amendment in document E/CONF.82/C.2/L.30, said that it firmly believed that what was needed was an expression of universal solidarity in connection with a problem that affected the entire world and not just certain categories of countries. In its view, it was appropriate in the present context to tackle the issue of support for and assistance to transit countries, which would have to be provided through the international organizations most directly involved. His delegation had some difficulty with the idea of cost-sharing in individual cases, since the dangers of illicit traffic were a responsibility shared by all States; namely, States of destination, transit and origin.

47. He said that, in the light of the Committee's discussions and decisions, the words "States particularly affected by transit traffic" in the third line of his delegation's amendment should be replaced by the words "transit States in need of such assistance and support".

48. Mrs. THISTLETHWAITE (United Kingdom) supported the Netherlands proposal.

49. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) said that both the original article 6 bis as well as its reformulated version in document E/CONF.82/C.2/L.28 were acceptable.

50. Mr. SHRESTHA (Nepal) said that while both the amendments before the Committee in documents E/CONF.82/C.2/L.28 and L.30 were improvements on the original draft, his delegation particularly welcomed the reference to co-operation in the former. He noted that many transit States lacked the technical know-how and resources to deal with drug trafficking and related activities and should be given special support. For that reason he suggested that the words "particularly the developing and least-developed States" should be inserted after "transit States" in the second line of paragraph 1 and the last line of paragraph 2 of the amendment in document E/CONF.82/C.2/L.28.

51. Mr. TANAKA (Japan) and Mrs. ROUCHEREAU (France) supported the Netherlands proposal.

52. Mr. RAMESH (India), while appreciative of the Netherlands proposal, felt that the reformulation presented in document E/CONF.82/C.2/L.28 was more comprehensive and dealt at greater length with questions of assistance and support. He understood the "other related activities" referred to in paragraph 1 to include training programmes and other forms of assistance. That was important, as the transit countries, which were mostly developing countries and had to divert their limited financial, technical and other resources from their development programmes to help the international community in combating the drug menace, should be assisted in all areas. He also emphasized the need for the bilateral and multilateral treaties referred to in paragraph 3, since they would help to plug any loopholes and make the international convention more effective. A similar provision had been included in other articles.

53. Mr. SAHRAOUI (Algeria) said that the international community should pay special attention to countries that lacked the facilities or infrastructure to control or monitor drug traffic. Yet if drug control was to be effective, transit countries needed the financial assistance referred to in document E/CONF.82/C.2/L.28, and not the technical cooperation programmes mentioned in document E/CONF.82/C.2/L.30, which were already covered by article 6. His delegation therefore supported the proposal in document E/CONF.82/C.2/L.28. He suggested, however, that the word "connexes" in paragraph 1 of the French version was a little vague, and might be replaced by "autres activités liées à cette interdiction". He also suggested the deletion of the word "traffic" at the end of paragraph 2.

54. Mr. JENKINS (Australia) said he strongly supported the Netherlands amendment.

56. Referring to the Indian representative's comment on the importance of paragraph 3 of document E/CONF.82/C.2/L.28, she suggested that the article should start with a paragraph on the following lines: "The Parties shall co-operate closely with each other, consistent with their respective national, legal and administrative systems, with a view to enhancing the effectiveness of measures of control and suppression of transit traffic. They shall, on the basis of bilateral or multilateral agreements or arrangements:" followed by the wording of the proposal in document E/CONF.82/C.2/L.30, starting with "co-operate" in the first line.

57. Mr. LOW MURTRA (Colombia) supported the wording in document E/CONF.82/C.2/L.28, with a few exceptions. He proposed that, as the measures taken by the poor countries to suppress drug trafficking constituted an immense and costly burden for them, article 6 bis should be amended to provide that the resources required for programmes to combat drug trafficking should be obtained from the proceeds of drug trafficking, in accordance with article 3, and made over to the United Nations.

58. Ms. BRUCKER (Canada) said she supported the Netherlands amendment in document E/CONF.82/C.2/L.30.

59. Mr. MAROTTA (Italy) also supported the Netherlands amendment, which clarified the ideas contained in documents E/CONF.82/3 and E/CONF.82/C.2/L.28.

60. Mr. SUKANDAR (Indonesia) said that the 12 sponsors of document E/CONF.82/C.2/L.28 were prepared to accept the Nepalese representative's amendment.

61. Mr. AL YOULD SIDI (Mauritania) said that the developing countries faced particularly severe problems due to drought, inflation and indebtedness, and that sufficient funds would have to be made available to them if they were to carry out an effective programme to eradicate illicit trafficking. For that reason, he was in favour of the adoption of the wording contained in document E/CONF.82/C.2/L.28.

62. Mr. WETUNGU (Kenya) said he also supported that wording in view of the definition of a transit State that had been agreed upon.

63. Mrs. ADEGBOKUN (Nigeria) said her delegation was in favour of the wording in document E/CONF.82/C.2/L.28 as amended by the Nepalese representative.

64. Mr. PAYE (Senegal) said that as the effect of the wording in document E/CONF.82/C.2/L.30 was to limit the assistance and co-operation to be extended to transit States, his delegation preferred the version contained in document E/CONF.82/C.2/L.28.

65. Mr. CHYANG (Cameroon) associated himself with the views expressed by the representative of Mauritania.

66. Mr. STEWART (Bahamas), speaking as one of the sponsors of the amendment contained in document E/CONF.82/C.2/L.28, said that the wording proposed by the Nepalese representative had improved the text.

67. Mr. STORBECK (Federal Republic of Germany) considered that the version proposed by the Netherlands and amended orally by the United States representative was satisfactory, whereas the wording of paragraph 1 of document E/CONF.82/C.2/L.28 seemed to lack clarity.

68. Mr. OSEI (Ghana) said that, although the versions contained in documents E/CONF.82/C.2/L.28 and L.30 were almost identical in scope, the former was more detailed and appeared to enjoy greater support among delegations; he therefore favoured its adoption.

69. The CHAIRMAN said that it was his impression that there was a marginal preference in the Committee for the amendment contained in document E/CONF.82/C.2/L.28, and that he would assume that the Committee wished to take that amendment as the basis for further discussion on article 6 bis.

70. It was so decided.

71. Mr. SIBLESZ (Netherlands) said that, while his delegation was prepared to abide by the principle of consensus, its acceptance of the amendment as a basis for the Committee's deliberations should not be construed as prospective assent to such articles as might emerge from the discussion.

72. Mr. TANAKA (Japan) said that the draft amendment, as orally amended by the United States representative, was acceptable to his delegation in the interests of compromise.

73. The CHAIRMAN recalled that the United States representative had proposed a chapeau for article 6 bis which relied largely on the language used in article 6, paragraph 1, as it appeared in document E/CONF.82/3.

74. Mr. SIBLESZ (Netherlands) suggested that paragraph 1 could usefully be amended to read "The Parties shall co-operate to the extent possible, directly or through competent international or regional organizations, to assist and support transit States in need of such assistance and support through programmes of technical co-operation."

75. Mrs. THISTLETHWAITE (United Kingdom) supported that wording.

76. Mr. RAMESH (India) said that the Netherlands amendment overlooked the practical difficulties confronting transit States, particularly when those States were developing countries which lacked the infrastructure and resources to mount an effective campaign against illicit traffic. Cost-sharing, which seemed to be the issue underlying the amendment just proposed by the Netherlands, could be undertaken at the request of the transit State.
77. Mrs. ROUCHEREAU (France) supported the Netherlands amendment.

78. Mr. LOW MURTRA (Colombia) said he shared the views expressed by the representative of India. The poorer countries of the world should not be asked to shoulder the burden of enforcement, and his delegation firmly believed that the convention should contain a provision to the effect that the proceeds of seizures should be used specifically for the purpose of combating illicit traffic. His delegation favoured the wording used in document E/CONF.82/C.2/L.28, paragraph 1.

79. Ms. GRAHAM (United States of America) said it had not been the intention of delegations supporting document E/CONF.82/C.2/L.30 to oppose the principle of financial assistance to transit States. Nor was that the aim of the Netherlands amendment to paragraph 1 of document E/CONF.82/C.2/L.28.

80. Mr. YASSIN GAILI (Sudan) noted that it would be impossible for a country such as his own, which had frontiers with eight other States, to control drug trafficking effectively without external technical and financial assistance.

81. Mr. AL-OZAIR (Yemen) said it might be better if paragraph 1 were reworded to read "The Parties may undertake . . .", so as to reflect the voluntary nature of the technical co-operation and assistance to be provided.

82. Mr. FALLAS (Costa Rica) said that it was essential that paragraph 1 be retained if developing countries which found themselves in the situation of transit States were to participate fully in the campaign against illicit traffic. Such participation could not be achieved without financial assistance.

83. Mr. OSEI (Ghana) felt that the concerns of the Netherlands and the United Kingdom were adequately addressed in paragraph 3 of document E/CONF.82/C.2/L.28.

84. Mr. SAHRAOUI (Algeria) agreed with the two previous speakers, but pointed out that countries making funds available internationally to combat the illicit traffic in drugs were in effect investing in their own future.

85. Mrs. THISTLETHWAITE (United Kingdom) said that insistence on referring to the principle of cost-sharing might in fact impose an undue burden on those developing countries which were transit States. The principle of financial assistance was not itself in question, and her delegation did not take issue with paragraph 1 in that respect. As suggested by the representative of Ghana, the best way to approach the problem might be through the bilateral and multilateral agreements referred to in paragraph 3.

86. The CHAIRMAN said that, to judge from the debate, there were some indications that a compromise might be reached during informal consultations, and he urged delegations to participate in such consultations in order to achieve a speedy solution to the problems raised by article 6 bis.

The meeting rose at 6.15 p.m.
Article 6 bis (concluded)

4. Mr. van GORKOM (Netherlands) said that consultations with the sponsors of the amendment in document E/CONF.82/C.2/L.28 had given rise to the following proposed wording of article 6 bis:

"1. The Parties shall co-operate to the extent possible, 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 through programmes of technical co-operation.

"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 transit traffic.

"3. The Parties may conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard."

5. Mr. OPARA (Nigeria) suggested that the words "to the extent possible" in paragraph 1 of the proposed wording should be deleted, and that paragraph 2 should be introduced by the words "The Parties shall undertake" and paragraph 3 by the words "The Parties shall seek to conclude".

6. Mr. SIDI (Mauritania) endorsed the Nigerian representative's suggestions.

7. Mr. RAMESH (India) emphasized the importance his delegation attached to the words "drug interdiction and other related activities", which had been omitted from paragraph 1 in the new wording.

8. Mr. van GORKOM (Netherlands) proposed the insertion of the words "on drug interdiction and other related activities" after the word "co-operate" in paragraph 1 of the new wording.

9. Mrs. ROUCHEREAU (France) supported that proposal.

10. In view of the previous discussion of the term "transit traffic", she proposed that reference to it should be deleted in paragraph 2, which could end with the words "prevention of traffic" or "prevention of traffic affecting them".

11. Mr. OSEI (Ghana) said his delegation, which supported the new text as amended by the Nigerian representative, proposed the addition of the following words to the end of paragraph 3: "including sharing appropriately the cost incurred by transit States when requested on drug interdiction and other related activities".

12. Mr. BOURESSLI (Kuwait) and Mr. BABAYAN (Union of Soviet Socialist Republics) thought that the proposed new wording offered a sound basis for consensus.

13. Mr. OPARA (Nigeria) proposed the suspension of the meeting to give delegations time to consider the new wording.

The meeting was suspended at 11.10 a.m. and resumed at 11.25 a.m.

14. Mr. OPARA (Nigeria) said that his delegation could accept the new wording if paragraph 1 were amended to read as follows:

"The Parties shall co-operate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries, to the extent possible, in need of such assistance and support through programmes of technical co-operation on drug interdiction and other related activities."

15. Mr. RAMESH (India) supported the amendment suggested by the Nigerian representative as well as the French representative's proposal regarding "transit traffic."

16. Mr. van GORKOM (Netherlands) said that the wording proposed by the Nigerian representative was acceptable.

17. Mr. BABAYAN (Union of Soviet Socialist Republics) was concerned about the possible implications of the word "affecting" suggested by the French representative.

18. Mr. van GORKOM (Netherlands) said that the proposed wording he had read out included the reference to "transit traffic" in document E/CONF.82/C.2/L.28, and proposed that it should be retained.

19. Mrs. ROUCHEREAU (France) suggested that the difficulty might be overcome by simply referring to "traffic."

20. Mr. RAMESH (India) said his delegation was in favour of the reference to "transit traffic" in the interest of consensus.

21. Mr. OSEI (Ghana) suggested that the end of paragraph 2 should be amended to read "control and prevention of illicit traffic in narcotic drugs, psychotropic substances and substances in Lists A and B."

22. Mr. OPARA (Nigeria) proposed that paragraph 2 should end with the words "illicit traffic."

23. Mr. van GORKOM (Netherlands) accepted the Nigerian representative's proposal.

24. The CHAIRMAN read out the amended revised wording of article 6 bis:

"1. The Parties shall co-operate, 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 co-operation 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 and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard."

25. Mr. VALL (Mauritania) said that his delegation supported that new wording.

26. Mr. PALARINO (Argentina) suggested that, since the assistance in question was intended for transit States, the end of paragraph 2 should read "illicit transit of narcotic drugs and psychotropic substances".

27. Mrs. THISTLETHWAITE (United Kingdom), referring to the Argentine representative's suggestion, said that in her view the term "illicit traffic" covered all appropriate aspects of traffic through transit States.

28. Mr. de TORRES (Spain) said that the new wording was acceptable, provided that the Drafting Committee was requested to find a form of words to express the idea of "transit traffic" because, as mentioned by the representative of Argentina, "illicit traffic" was not sufficiently specific.

29. Mr. PALARINO (Argentina), referring to previous discussions on other articles, proposed "transit shipment and the effects thereof".

30. Mr. MAROTTA (Italy) proposed that the end of paragraph 2 should read "illicit traffic passing through their territory".

31. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation, which was concerned about the possible implications of the word "effects" suggested by the Argentine representative, could accept either "illicit traffic" or "transit traffic".

32. Mr. PALARINO (Argentina) emphasized that "transit" and "illicit traffic" were two completely different concepts.

33. The CHAIRMAN asked whether the Committee was prepared to approve the amended text of article 6 bis he had read out.

34. It was so decided.

35. The CHAIRMAN reminded the Committee that it had already adopted paragraph 1 as it stood and paragraph 2 with a reservation regarding the reference to "transit States" in subparagraph 2(b), pending discussion of article 6 bis. He assumed that the Committee was now in a position to approve paragraph 2 as well as paragraph 3 in respect of which a similar reservation had been made.

36. It was so decided.

37. The CHAIRMAN noted that paragraph 4 had already been approved and invited the Committee to consider paragraph 5 in document E/CONF.82/3.

38. Mr. SIBLESZ (Netherlands), supported by Mrs. ROUCHEREAU (France) and Mr. MENDIS (Sri Lanka), proposed the deletion of paragraph 5 in view of the new wording of article 6 bis that had been approved.

39. It was so decided.

40. Mr. GONZALEZ LOPEZ (Cuba) said that his delegation's proposal (E/CONF.82/C.2/L.18) had been re-formulated and now consisted of a text for inclusion as paragraph 1 bis in the draft convention. It read as follows:

"1 bis. When one of the Parties adopts measures for the prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances in Schedules I and II in the vicinity of the external limit of the territory of another Party, with which there are no conventions or agreements of a bilateral or any other nature regarding co-operation for the suppression of illicit traffic in such substances, the Party carrying out such measures shall supply the other Party with information on them so that the latter may prevent them from having possible damaging consequences on its territory as a result of attempts by drug traffickers to evade surveillance or pursuit."

41. Mr. SABOIA (Brazil) suggested it might be more consistent to add the words "of this Convention" after "narcotic drugs and psychotropic substances and substances in Schedules I and II".

42. Mrs. ROUCHEREAU (France) said that her delegation would welcome clarification of the application of the provisions of the Cuban proposal in the light of subparagraph 1(a).

43. Mr. GONZALEZ LOPEZ (Cuba) stressed that his delegation's proposal concerned exchanges of information in cases where there were no bilateral agreements or other arrangements between the countries involved.

44. Mr. SIBLESZ (Netherlands) said that the provisions of the Cuban proposal appeared to be covered by subparagraph 1(a).

45. Mrs. de la GARZA (Mexico) said that her delegation was in favour of the text proposed by Cuba.

46. Mrs. ROUCHEREAU (France) said that her delegation opposed the Cuban proposal.
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47. Mrs. THISTLETHWAITE (United Kingdom) agreed with the Netherlands representative that the provisions of the Cuban proposal were covered by subparagraph 1(a).

48. Mr. WETUNGU (Kenya) said that his delegation saw no reason to include the Cuban proposal in the draft convention.

49. Mr. BROWNING (United States of America) said that it was better for exchanges of information to be arranged under bilateral or multilateral agreements and that the points made in the Cuban proposal were adequately covered by the provisions of paragraph 1(a).

50. Mr. SABOIA (Brazil) sympathized with the ideas embodied in the Cuban proposal and suggested that further efforts be made to arrive at an acceptable draft.

51. Mr. WIENIAWSKI (Poland) endorsed the views expressed by the Brazilian representative.

52. Mr. GONZALEZ LOPEZ (Cuba) said that his delegation was willing to withdraw its proposal in order to facilitate agreement.

53. He emphasized the need for international co-operation to control illicit trafficking, and cited the example of Cuba, which had no serious production, trafficking or consumption problems, but was threatened by drug cargoes which floated ashore after having been dumped overboard from vessels fleeing other countries' law enforcement agencies.

54. The CHAIRMAN said that, in the absence of further comments, he assumed that the Committee wished to approve article 6.

55. It was so decided.

The meeting rose at 1.05 p.m.

25th meeting
Tuesday, 13 December 1988, at 3.20 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)


1. Mr. HARRISON (Australia) said that the informal consultations held the previous evening on article 12 had been useful, but as no consensus text had emerged he hoped it could be discussed by an informal working group that evening.

2. Mr. BABAYAN (Union of Soviet Socialist Republics) said that, while his delegation was in favour of texts arrived at through a process of compromise and consensus, it was very concerned by the protracted discussions on article 12, which contained no bracketed language and might therefore be regarded as largely acceptable. If no consensus could be achieved in the working group, the article should be considered in the Committee, and perhaps even put to a vote.

3. Mr. SABOIA (Brazil) said he would welcome any opportunity for informal consultations on article 12. With regard to the point raised by the USSR representative, he noted that both the expert group and the Review Group had chosen to ignore certain issues arising from article 12 which were of legitimate concern to a number of delegations, and that it was altogether appropriate for such issues to be addressed by the Conference.

4. The CHAIRMAN said that, while he fully appreciated the concern voiced by the USSR representative, the discussions on article 12 in the expert and Review Groups had not in fact resulted in a consensus text, and the Conference offered an opportunity of reassessing the article in an endeavour to reach agreement. He hoped that an acceptable working paper would emerge from the informal consultations in time to be submitted to the Committee the following morning.


5. Mr. AGUILAR (Bolivia), speaking on behalf of the sponsors, introduced the 12-country amendment contained in document E/CONF.82/C.2/L.29, and said that it reflected the fact that three of the sponsors—Bolivia, Colombia and Peru—were particularly seriously affected, because of their geographical location, by the problem of illicit trafficking. Every effort was being made in those countries to control the illicit cultivation of coca through crop substitution and rural development programmes. In that connection, he paid tribute to the contributions made by the United Nations Fund for Drug Abuse Control and United Nations regional bodies, and by bilateral and multilateral co-operation projects.
6. The primary responsibility for dealing with the problem of illicit trafficking lay with the Governments and peoples of the countries most directly concerned, but they needed the support of the international community and of an effective international instrument.

7. It was particularly important to ensure that the convention did not penalize the licit cultivation of coca bushes and the licit traditional uses of coca leaf and its consumption. The countries concerned were actively engaged in eradicating illicit cultivation; marijuana production in Colombia had virtually ceased, and Peru had achieved impressive results in eliminating coca production through agreements with coca bush cultivators.

8. At the 1987 Conference a Comprehensive Multidisciplinary Outline had been adopted by consensus with a view to achieving a balance between the concerns of consumer, producing and transit countries. It was important that the same balanced approach be adopted in the convention. For that reason, an undifferentiated approach aimed merely at crop-eradication would not succeed in cutting off the sources of raw materials for narcotics production; the problem of rural underdevelopment must also be tackled comprehensively.

9. Basic human rights and environmental protection must also be taken into account, and the 12-country amendment went a long way in meeting such concerns.

10. With regard to the proposal submitted by the Indian delegation in document E/CONF.82/C.2/L.2, he said that the suggestion that poppy straw should be included in the appropriate list had encountered considerable opposition in the working groups. The basic criterion should be that poppy straw was not in itself a narcotic drug, since a lengthy manufacturing process was required before it could be considered as falling within that category. Its cultivation could, perhaps, be made subject to voluntary forms of control.

11. Similar considerations would apply in the case of coca leaf, which had many medicinal and other uses, and was exported to Belgium, Japan, Portugal, the United Kingdom and the United States, for example, in order to produce alkaloids for industrial uses.

12. In conclusion, he said that the intention of the sponsors was to avoid any element of discrimination against legitimate producers and users.

13. Mr. LECAROS (Peru) said that he fully supported the views expressed by the representative of Bolivia. Indeed, as the climate of certain Latin American countries of the Andean region was ideal for the cultivation of the coca bush, which in some cases even grew wild, it was hardly surprising that such areas had attracted the attention of international drug traffickers.

14. In accordance with its international commitments, his country had made considerable efforts to combat the illicit trade in narcotic drugs, despite budgetary constraints and severe economic difficulties. The magnitude of the problem was such that valuable human and financial resources often had to be diverted from development projects. It should be emphasized, however, that the root of the problem lay with the consumers rather than the producers.

15. Referring specifically to paragraph 1 of article 12, he said that the 12-country amendment was intended to correct certain misunderstandings likely to arise from the text arrived at by the Review Group with regard to traditional and legitimate uses of plants containing psychotropic or narcotic substances.

16. Mr. MAROTTA (Italy) stressed his country's interest in the illicit crop replacement and the rehabilitation of drug addicts.

17. His delegation was concerned that the last part of article 10, paragraph 1, dealing with traditional domestic uses and protection of the environment in both the draft convention and the 12-country amendment might be used as a justification for not implementing illicit crop replacement programmes.

18. Ms. DEL CARMEN (Ecuador) said that her delegation supported the 12-country amendment and associated itself with the comments of the representatives of Bolivia and Peru on article 10, paragraph 1. It was important to respect the traditional uses of coca by the indigenous inhabitants, which should not be confused with the activities of traffickers.

19. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he failed to see any substantive difference between paragraph 1 of the original text of article 10 and the 12-country amendment. The point at issue was surely the distinction between licit and illicit cultivation, and the convention should make due provision in that respect, for example, by allowing for the production of cocaine for medical and other needs.

20. A further consideration was that of environmental protection: the need for crop-eradication programmes should not be allowed to outweigh a legitimate concern to conserve areas vulnerable to desertification and consequent loss of habitat. At the same time, his delegation felt that the notion of traditional uses should not be so expanded as to legitimize drug abuse.

21. Mr. TEWARI (India) said that his delegation, which agreed with the views expressed by the Bolivian, Peruvian and USSR representatives, considered that plants containing narcotic substances should be destroyed by burning so as to protect the environment.

22. His country had for many years been stressing the need to extend the control régime to cover poppy straw, which was the raw material used in morphine and heroin production. His delegation therefore felt strongly that since the new convention was intended to deal with all aspects of illicit traffic, it should also cover poppy straw.

23. He explained that his delegation's proposal contained in document E/CONF.82/C.2/L.2 for the insertion of a new paragraph after paragraph 3 was based on
paragraph 267 of the Comprehensive Multidisciplinary Outline and was designed to prevent the recycling of drugs on the illicit market.

24. Mr. RODRIGUEZ VARGAS (Colombia) agreed with the views expressed by the USSR representative.

25. His delegation's decision to become a sponsor of the 12-country amendment reflected Colombia's determination to combat the illicit cultivation of plants containing narcotic substances. He pointed out that the text also tried to take into account the fact that certain ethnic groups traditionally used such plants and the need to protect their social and cultural conditions when illicit plants were destroyed.

26. Mr. BOT (Netherlands) said that the 12-country amendment consisted mainly in the deletion of the sentence in the original text referring to the Single Convention of 1961, and his delegation was concerned that the effect might be to create a discrepancy between the draft convention and Single Convention and hinder the effective eradication of illicit cultivation. It therefore strongly opposed the deletion of that reference.

27. Ms. GRAHAM (United States of America) said that her delegation fully endorsed the views of the USSR and the Netherlands representatives, and felt strongly that the wording of article 10, paragraph 1, in the original text was basically sound since its mention of the Single Convention of 1961 and the 1972 Protocol provided precise points of reference. The 12-country amendment would be a step backwards. Any country that experienced difficulties with article 49 of the Single Convention with regard to traditional and licit cultivation could always take action under article 47.

28. Referring to the Italian representative's comments on the last sentence of paragraph 1, she felt it would make the purpose of the paragraph clearer if the words "as well as the protection of the environment" were replaced by "where permitted pursuant to the Single Convention on Narcotic Drugs, 1961, or the Convention on Psychotropic Substances. Such measures shall also take into account the need to protect the environment".

29. Her delegation supported the new paragraph proposed by India in document E/CONF.82/C.2/L.2, but suggested that the words "controlled substances" should be replaced "narcotic drugs, psychotropic substances or substances in Schedules I and II of this Convention".

30. Mrs. ROUCHEREAU (France) said that, in the view of her delegation, the 12-country amendment was contrary to the provisions of the 1961 Convention, as amended by the 1972 Protocol, and moreover—as pointed out by the Netherlands and United States representatives—would be a step backwards. States should respect their obligations under previous conventions by repressing consumption in an effort to eradicate production.

31. Her delegation therefore opposed the 12-country amendment and felt that the humanitarian concerns expressed by certain Latin American delegations were covered by the original text.

32. Mr. BOUFRAKECH (Morocco) said that his delegation endorsed the views expressed by the USSR representative and supported the 12-country amendment subject to the insertion of the words "to the best of its ability" after "each Party".

33. It proposed that the wording of article 10, paragraph 2 should be made mandatory throughout and favoured deletion of the words "when appropriate" in the second line.

34. Mrs. THISTLETHWAITE (United Kingdom) said her delegation found great difficulty in supporting the 12-country amendment because it omitted the reference to the relationship between the draft convention and the Single Convention of 1961 and 1972 Protocol. Her delegation took the view that the Single Convention was concerned with licit use whereas the draft convention dealt mainly with illicit use.

35. The original text of article 10, paragraph 1 was the result of considerable compromise, took traditional and domestic uses as well as human rights into account, and its final sentence covered the concerns expressed by the representatives of Bolivia and Peru, among others. It therefore had her delegation's support.

The meeting was suspended at 4.55 p.m. and resumed at 5.15 p.m.

36. Mrs. ICARDI (Monaco) expressed surprise that some representatives seemed to be questioning the provisions of earlier conventions, particularly those of the Single Convention of 1961. Her delegation was aware of the social and economic problems of the Latin American countries, but those were taken into account in the last sentence of paragraph 1. It therefore supported the statements made by the representatives of France, the USSR, the Netherlands and the United Kingdom, and was unable to accept the 12-country amendment.

37. Mr. ASSAD (Islamic Republic of Iran) said that the main idea behind both the original text of article 10 and the 12-country amendment seemed to be the same.

38. His delegation considered that the new convention should be stronger than previous ones and that there should be no backtracking in the eradication of illicit planting and production of narcotic drugs and psychotropic substances. Great care should be taken to prevent the reference to traditional domestic uses at the end of paragraph 1 from becoming a loophole that could be used for the illicit cultivation of coca bushes and cannabis plants, and in that connection noted that his country had been successful in putting an end to traditional cultivation of poppies and their use for illicit purposes.

39. Mr. WETUNGU (Kenya) said that his delegation favoured the original wording and content of article 10 and supported the Indian amendment in document E/CONF.82/C.2/L.2.
40. Mr. LeCAVALIER (Canada) strongly supported the views expressed by the Netherlands and other representatives concerning the 12-country amendment, which represented a step back from previous conventions. The last sentence of paragraph 1 of the original text was rather ambiguous and he suggested that the words "as governed by these conventions" should be inserted in the penultimate line after the word "plants".

41. Mr. SABOIA (Brazil) said his delegation supported the 12-country amendment because it recognized the need not unduly to penalize certain licit or traditional consumption, as well as the need to respect fundamental human rights and protect the environment.

42. Mr. HULTSTRAND (Sweden) supported the views of the Netherlands, United States, United Kingdom, Canadian and other representatives concerning the 12-country amendment, as well as the wording proposed by the Canadian representative.

43. Mr. ASBALI (Libyan Arab Jamiahirya) said that his delegation was unable to support the 12-country amendment, which contained no mention of the Single Convention of 1961. He preferred the original text of article 10, because it was more in line with his own country's legislation, which provided for the eradication of plants containing narcotic substances; the cost of eradication was borne by those who had planted them.

44. Mr. AGUILAR (Bolivia) thanked the various representatives who had spoken in support of the 12-country amendment.

45. Referring to the USSR representative's comments on the need to distinguish between cultivation for illicit purposes and licit production for traditional uses, he suggested that it would be useful if a definition of traditional and legitimate uses could be drawn up to supplement the existing draft. In that connection he emphasized that all the sponsors had the political will to eradicate illicit cultivation, and noted that they had already eradicated thousands of hectares.

46. The approach adopted by the sponsors was not at variance with the Single Convention of 1961, but would rather have the effect of complementing and reinforcing it. There were three aspects of the 12-country amendment which were not negotiable under any circumstances; namely, the fundamental human rights of the cultivators, traditional domestic use—where there was historic evidence of such use—and protection of the environment. It was important, in eradication operations, to avoid the use of herbicides or other substances which could adversely affect the environment or human health.

47. The CHAIRMAN said that a distinction must be drawn between the illicit use of the coca plant and traditional uses, such as coca chewing and coca tea drinking current in Latin American countries. The drafters of the Single Convention had ensured that the source of cocaine—the coca bush and leaf—was properly controlled, but had made temporary arrangements to maintain and respect traditional coca chewing. Those measures were now coming to an end.

48. He noted that in both the original text and the 12-country amendment, measures for the eradication of illicit cultivation were lumped together in the same paragraph as provisions concerning traditional uses, respect for human rights and protection of the environment. He suggested that it would be more logical if paragraph 1 were divided into two. The first paragraph would deal with the eradication of illicit production and the protection of the environment—which was a related point because toxic chemicals were used to destroy plants. The second paragraph would deal with respect for fundamental human rights and the protection of traditional domestic uses.

49. Mr. BOUFRAKESH (Morocco) suggested that the words "common frontiers" in the ninth line of paragraph 2 should be replaced by the word "neighbouring". Some countries, for example Mediterranean States, were neighbours without having common frontiers.

50. Mrs. SAHRAOUI (Algeria) supported the Chairman's suggestion for the division of the paragraph and suggested that a sentence on the following lines should be inserted after the words "traditional domestic uses" in the fifth line of the 12-country amendment: "and of the domestic socio-economic use of licit crops in their natural state, which have not been subject to chemical processing".

51. Mr. TRAORE (Guinea) said that if traditional uses had harmful effects, people—especially young people—would have to be taught about the dangers. Many countries had managed to eliminate such traditional uses.

52. Mr. BABAYAN (Union of Soviet Socialist Republics) also supported the Chairman's suggestion but felt that the protection of the environment should be dealt with in a separate paragraph, stating that eradication of plants should take account of the need not to damage the environment.

53. As regards traditional uses, traditional legitimate uses of coca leaves and the unacceptable traditional use of opium smoking would have to be separated. Another problem was the practice—if it still existed—of paying wages partly in coca leaves.

54. In conclusion he proposed that article 10 should include a separate paragraph reading: "Measures adopted by the Parties in accordance with article 10 shall not adversely affect the interests involved in the protection of the environment". That would relieve paragraph 1 of one point and make it easier to draft.

The meeting rose at 6 p.m.
26th meeting
Wednesday, 14 December 1988, at 10.25 a.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION
AGAINST ILICIT TRAFFIC IN NARCOTIC
DRUGS AND PSYCHOTROPIC SUBSTANCES
/agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 10 (continued)

1. Mr. AGUILAR (Bolivia) read out the reworded text
of the 12-country amendment (E/CONF.82/C.2/L.29):

"(a) Each Party shall take appropriate measures to
prevent the illicit cultivation of and to eradicate illicitly
cultivated plants containing psychotropic or narcotic
substances, such as opium poppy and cannabis plants.
In the case of the illicit cultivation of the coca bush,
each Party shall adopt the same approach as that
previously described with regard to illicit cultivation inten­
ted for the production of narcotic drugs.

"(b) The measures adopted shall respect funda­
mental human rights and shall take due account of licit
uses: traditional, domestic, medical, pharmaceutical
and industrial.

"(c) The measures adopted in conformity with
article 10 shall not affect the environment or human
beings".

2. Mr. BABAYAN (Union of Soviet Socialist Repub­
lies), noting that the division of article 10, paragraph 1
into three parts appeared to have resolved the problem
that had arisen, stressed the importance of the words "licit
uses" in subparagraph (b) and of the phrase "shall not affect" in subparagraph (c).

3. Mr. BOUFRAKECH (Morocco) supported the re­
worded text but suggested the insertion of "within its
means" after the words "Each party shall take appropriate
measures". Narcotic substances were a serious problem
but other difficulties such as the eradication of plants
containing psychotropic substances required even more
urgent attention.

4. Mr. TEWARI (India) said that the division of para­
graph 1 into three had made it clear that the same control
measures were to be applied in respect of the coca bush
if it was cultivated for the illicit production of drugs.

5. He suggested the replacement of the words "human
beings" in subparagraph (c) by "public health and wel­
fare".

6. Ms. GRAHAM (United States of America) said it was
essential to mention the Single Convention of 1961 and
also to refer to opium poppies, cannabis plants and coca
bushes together, as had been done in the Single Con­
vention; coca bushes must not be singled out.

7. She wondered what was meant by the term "licit
uses". The Committee was not the proper forum for the
discussion of matters relating to licit cultivation, and as a
Party to the Single Convention of 1961, her country was
deeply concerned about amendments which seemed to be
at variance with that instrument.

8. Mr. van GORKOM (Netherlands) said he understood
the difficulties that the sponsors of the 12-country amend­
ment were seeking to solve but felt that they could be
overcome only in accordance with the Single Convention
of 1961. He therefore suggested the addition of the
words "In conformity with the 1961 Single Convention
and the 1971 Convention" at the beginning of the re­
worded text.

9. Mr. EDWARDS (United Kingdom) endorsed the
views expressed by the United States representative and
supported the suggestion made by the Netherlands rep­
resentative. His delegation had reservations about the last
sentence of subparagraph (a), because it restricted the
notion of illicit cultivation to narcotic drug production
and, by implication, allowed cultivation for other
purposes. That seemed to narrow down the provisions of
the 1961 Single Convention with regard to the cultivation of
the coca bush. The proper forum for renegotiating the
1961 Convention on such points was the Commission on
Narcotic Drugs.

10. Mr. BABAYAN (Union of Soviet Socialist Repub­
lies) suggested that article 10 would be more acceptable if
a separate paragraph were added specifying that the
measures provided for were not to be less stringent than
those contained in the 1961 Single Convention and the
1971 Convention.

11. Mr. SUKANDAR (Indonesia) had reservations about
the term "traditional" use. It was difficult to prevent tra­
ditional use from becoming illicit use, and it was impor­
tant to be consistent in combating the illicit use of narcotic
drugs in any form.

12. Mr. AGUILAR (Bolivia) pointed out that, in 1984,
the French Minister of Foreign Affairs and visiting dele­
gations from a number of other countries had publicly af­
irmed the need to acknowledge the traditional uses of the
coca leaf and had rejected the idea of penalizing such
uses. Bolivia had been working with many countries, such
as the United States, Italy, the United Kingdom, Finland,
Norway, Sweden and the Netherlands, on crop eradication
programmes and programmes to combat narcotic drug
production. Efforts were being made to win over the
Bolivian farmers, but the main problem was presented by
the traffickers.
13. Mr. RODRIGUEZ VARGAS (Colombia) pointed out that the draft preamble to the draft convention contained two references to the 1961 Single Convention, the 1972 Protocol and the 1971 Convention, which did not condemn licit cultivation; to do so at the present juncture would only create social and political problems.

14. Mr. de TORRES (Spain) said that the distinction made between the coca bush on the one hand and opium poppy and cannabis on the other was very misleading, because it gave the impression that coca leaves did not contain psychotropic or narcotic substances; that was inconsistent with pharmaceutical facts. All three plants must be included as psychotropic or narcotic substances, and the same eradication measures must apply to all three. Moreover, subparagraph (b) of the reworded text implied that traditional domestic uses also existed for opium poppy and cannabis plants, because it failed to make a distinction between those two plants and the coca bush. His delegation therefore proposed including a reference to licit uses that would apply to all three, inasmuch as they all had medical, pharmaceutical and industrial uses, but any reference to traditional domestic uses should apply solely to the coca bush.

15. Although the draft preamble mentioned existing Conventions, a new paragraph should be inserted in article 10 containing a reference to the need for compliance, along the lines of "in conformity with the existing Conventions" or "such measures shall not be less stringent than those contained in existing Conventions".

16. Ms. GRAHAM (United States of America) supported the USSR representative's suggestion to add a fourth paragraph to article 10 mentioning the 1961 Single Convention.

17. She agreed with the United Kingdom and Spanish representatives that a separate reference to coca cultivation was unacceptable. The 1961 Single Convention as amended by the 1972 Protocol had already established the relationship between the coca bush, opium poppy and cannabis plants. She also agreed with the Spanish representative that the reference to existing Conventions in the preamble was insufficient.

18. Mr. TEWARI (India) pointed out that article 22, paragraph 2 of the 1961 Single Convention, which contained guidelines on illicit cultivation, did not apply to the coca bush, but only to the opium poppy and cannabis plants. The reworded text was therefore consistent with the provisions of that Convention. Moreover, as a number of articles in the 1961 Single Convention dealt with the monitoring of licit cultivation, it was unnecessary to distinguish between licit and illicit cultivation in article 10, paragraph 1.

19. Mr. OPARA (Nigeria) said that the purpose of paragraph 1 was to provide for measures that would discourage the illicit cultivation of narcotic drugs. The reference in the preamble to existing Conventions was most relevant, because it meant that the measures contained in the draft convention would be more stringent. The reworded text would be acceptable to his delegation if the words "traditional domestic uses" were replaced by "licit uses".

20. Mr. BABAYAN (Union of Soviet Socialist Republics) said he found it difficult to understand how the reworded text of paragraph 1 could have an adverse effect on licit cultivation, since it dealt with illicit cultivation and its eradication. However, specific wording could be added to the effect that such eradication should not affect cultivation for licit uses.

21. It was also unclear why certain delegations objected to including in paragraph 1 a statement to the effect that the measures provided for should be no less stringent than those contained in existing Conventions.

22. Mr. ASSADI (Islamic Republic of Iran) said that subparagraph (a) must contain a reference to the 1961 Single Convention and the 1971 Convention; it was inappropriate to single out a particular dependence-producing drug. With regard to subparagraph (b), his delegation agreed that licit medical, pharmaceutical and industrial uses were important, but was concerned about traditional uses which became harmful for human beings.

23. Mr. AGUILAR (Bolivia) noted that there was general agreement that stringent measures were necessary. However, the target of such measures must not be the peasants but the traffickers who exploited them.

24. His delegation agreed with the Spanish representative that subparagraph (b) must contain an explicit reference to coca cultivation for licit and traditional uses. Referring to the view expressed by the Iranian representative, he said that everything indicated that the traditional use of coca leaves caused no physical or psychological harm to human beings.

25. Mr. BOUFRAKECH (Morocco) agreed with the United States representative that no distinction should be made between the coca bush and other plants containing psychotropic substances.

26. Mr. ASBALI (Libyan Arab Jamahiriya) said that the reworded text was still vague. His delegation preferred the original wording which was more concrete and would not object to a specific reference in article 10 to the 1961 Single Convention.

27. Mr. van GORKOM (Netherlands) said that the Netherlands was most impressed by Bolivian efforts to combat illicit drug trafficking and production, and explained that the two countries were about to embark upon a co-operation programme in that area. However, his delegation had reservations about the reworded text and agreed with the views expressed by the Nigerian, Indonesian, Moroccan and Libyan representatives on the subject. Indeed, the fact that paragraph 3 of the 1987 Declaration of the International Conference on Drug Abuse and Illicit Trafficking stated that a new convention should complement existing international instruments, was a further argument in favour of a reference to existing Conventions. He therefore proposed that the Committee should revert to the original text of the 12-country amendment.
(E/CONF.82/C.2/L.29), the beginning of which should be amended to read "In conformity with the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971, each Party . . . .". His delegation also agreed with the Nigerian representative's suggestion to replace the words "traditional domestic uses" by "licit uses".

28. Mr. EDWARDS (United Kingdom) said that his delegation had the highest respect for the very real efforts being made by the Bolivian Government and other Governments of the region to deal with the serious problem of coca cultivation. But the reworded text read out by the Bolivian representative would undermine the 1961 Single Convention in that respect. He supported the USSR representative's suggestion to include a provision making it clear that the requirements of the 1961 Convention still applied. Yet a provision of that nature grafted on to the reworded text would hardly achieve the desired results and would cause confusion about the status of coca. His delegation preferred the text of article 10, paragraph 1 in document E/CONF.82/3 because it approached eradication in a sensible and comprehensive manner, and supported the proposal just made by the Netherlands representative.

29. Mr. de TORRES (Spain) said that his delegation agreed with the Bolivian representative that it was the traffickers and not Bolivian peasants who should be targeted, and paid tribute to the Bolivian Government's efforts to eradicate the illicit cultivation of coca.

30. It might well be possible to reach a consensus on the original text of the 12-country amendment by referring to the measures provided for in the 1961 Single Convention and the 1972 Protocol either at the beginning of the text or in a new paragraph.

31. Mrs. ROUCHEREAU (France) said that, in a spirit of compromise, her delegation was prepared to accept the previous speaker's suggestion, which reflected the suggestions made by the USSR and Netherlands representatives.

32. Mr. BABAYAN (Union of Soviet Socialist Republics) said he preferred the reworded text, subject to the inclusion of a reference to existing Conventions.

33. Mr. EDWARDS (United Kingdom) said his delegation was in favour of the original text of the 12-country amendment with the addition of the words proposed by the Netherlands representative. It could not accept the reworded text as amended by the USSR representative.

34. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he would be able to accept the original text of the 12-country amendment subject to the inclusion of a reference to existing Conventions. A reference to the need to respect traditional forms of licit use was also in order.

35. Ms. GRAHAM (United States of America) said that her delegation had originally supported the text of article 10 as it appeared in document E/CONF.82/3, but was prepared to accept the idea proposed by the Netherlands representative providing that wording along the lines of "to carry out their obligations under the 1961 Single Convention and the 1971 Convention" was used.

36. Mrs. ROUCHEREAU (France) supported the Netherlands representative's proposal and the suggestion made by the USSR representative. Her delegation could also accept the United States representative's proposal, but felt that a reference to the relevant Conventions should be sufficient.

37. Mrs. ICARDI (Monaco) supported the Spanish representative's proposal to insert a reference to the Single Convention of 1961 and its 1972 Protocol in the 12-country amendment.

38. Mr. PAULSEN (Denmark) said that his delegation supported the Netherlands representative's proposal as a compromise, but was also prepared to accept the United States representative's proposal.

39. Mr. POULIOT (Canada) said that his delegation accepted the 12-country amendment together with either the addition proposed by the Netherlands and USSR representatives.

40. Mr. SINGER (German Democratic Republic) said he supported the 12-country amendment together with the changes proposed by the Netherlands and USSR representatives.

41. Mr. BABAYAN (Union of Soviet Socialist Republics) requested the Chairman to read out the new version of the 12-country amendment.

42. The CHAIRMAN said that the new version read as follows:

"In conformity with the provisions of the Single Convention on Narcotic Drugs of 1961 and that Convention as amended by the 1972 Protocol, each Party shall take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing narcotic drugs 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."

43. Mr. BABAYAN (Union of Soviet Socialist Republics) felt that a reference should also be made to the 1971 Convention on Psychotropic Substances so as to dispel any doubt about whether the new version also applied to the psychotropic substances referred to in that Convention.

44. The CHAIRMAN thought that there would be no objection to including a reference to the 1971 Convention except where its provisions could be misinterpreted. The Conference for the adoption of the 1971 Convention had decided not to include peyote as a psychotropic substance, because of its traditional uses, but that plant's active ingredient, mescaline, had been placed on the list of psychotropic substances in the Schedules. The Committee
might therefore consider whether a reference to the 1971 Convention would improve the new text or not.

45. Mr. AGUILAR (Bolivia) said that the text under consideration must deal with new problems that had not been envisaged when the previous conventions had been drafted. As the specific purpose of the draft convention was to deal with illicit traffic, his delegation was surprised that the new version of paragraph 1 just read out by the Chairman should penalize traditional uses, which were the only form of consumption not harmful to human beings.

46. Speaking on behalf of the Bolivian, Peruvian and a number of other delegations, he proposed the following new paragraph for inclusion in article 10.

"Such measures shall not be less stringent than the requirements to be applied to the illicit cultivation of plants intended for the production, possession and abuse of narcotic drugs in accordance with the provisions of the Single Convention of 1961 and that Convention as amended by the 1972 Protocol."

That wording would take into account use, consumption, abuse and possession, together with the provisions of the 1961 Convention.

47. Mr. LEÇAROS (Peru) supported the Bolivian representative's proposal.

48. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he could support the Bolivian representative's proposal if it meant that the methods provided for in the new text should not be less stringent than those contained in existing Conventions.

49. Mr. EDWARDS (United Kingdom) noted that the Bolivian representative's proposal considerably expanded the device for keeping alive the 1961 and 1971 Conventions, but his delegation wanted more time to consider it and to examine its implications for the other paragraphs of article 10.

50. Mr. de TORRES (Spain) said that the Bolivian representative's proposal had the merit of reflecting the provisions of the 1961 Convention. However, it would be preferable if it were added to the end of paragraph 1 so as to apply only to that provision rather than to all paragraphs in article 10.

51. Mrs. ROUCHEREAU (France) asked whether the new paragraph was to be added to the original text of article 10, paragraph 1 in document E/CONF.82/3, to the 12-country amendment or to the reworded text of that amendment.

52. Mr. AGUILAR (Bolivia) explained that the text in document E/CONF.82/C.2/L.29 reflected the position of his delegation and that of the other sponsors. The reworded text he had read out at the beginning of the meeting had incorporated the Chairman's suggestions, which had been supported by a number of other delegations. The discussion had rightly demonstrated the need to distinguish between the cultivation of plants containing narcotic or psychotropic substances and that of the coca bush. At the previous meeting, it had been suggested that the text should be divided into separate paragraphs for the sake of clarity; that had been done, and the reworded text he had read out took into account the Spanish suggestion for a subparagraph (b) containing a reference to the special case of the coca leaf and included a new paragraph covering all aspects of production and consumption.

The meeting rose at 1.05 p.m.

27th meeting
Wednesday, 14 December 1988, at 4 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 10 (continued) (E/CONF.82/C.2/L.31, L.32 and L.33)

Paragraph 2

1. Mr. CABANAS (Mexico), introducing the joint amendment in document E/CONF.82/C.2/L.33 submitted by the Canadian and his own delegations, said it was designed to make a distinction between the matters covered by paragraph 2 by setting them out in separate subparagraphs. He noted in particular that subparagraph (c) was intended to reassure countries with common frontiers that they would have jurisdiction over activities carried out within their respective areas along those frontiers.

2. Paragraph 2, as reformulated in document E/CONF.82/C.2/L.33, was approved.

Paragraph 3

3. Mr. CABANAS (Mexico), introducing the 21-country amendment in document E/CONF.82/C.2/L.32 on behalf...
of the sponsors, said it had been carefully drafted to include the views of all delegations with specific interests in the subject. The main purpose of the amendment was to reduce demand for narcotic drugs and psychotropic substances, and since the measures to which it referred were to be based on the Comprehensive Multidisciplinary Outline that had been accepted by all countries represented at the present Conference, its aims coincided with those of the international community.

4. Mr. NAVARRO (Chile) said that his delegation supported the amendment in general.

5. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation could support the amendment if the second sentence in the first paragraph were deleted. It would be inappropriate in an international convention to require Governments to follow recommendations that were not necessarily mandatory. Moreover, the convention could not require Governments to adopt a particular method; the choice of method must be left to the Parties.

6. The CHAIRMAN pointed out that if the USSR representative’s proposal were adopted, the first six words of the second paragraph would have to be deleted. He suggested that the Conference might adopt a resolution referring to the Multidisciplinary Outline.

7. Mr. BABAYAN (Union of Soviet Socialist Republics) said he would not object to a resolution if that was the general desire, although he saw no need for one. The International Conference of 1987 had drawn up the Outline as a “working guide”, but it was not for the present Conference to tell Governments how they should use it.

8. Mrs. ROUCHEREAU (France) pointed out that it was not customary in a convention to ask the Parties to accept another international regulation. In fact, the 21-country amendment inverted the usual order in international treaties. Normally it was a recommendation or resolution that led to the formulation of an international convention. Her delegation too favoured deletion of the reference to the Outline.

9. Ms. GRAHAM (United States of America) supported the 21-country amendment. While her delegation had no difficulty with the reference to the Outline, she suggested that the USSR representative’s objections might be overcome if the word “should” in the fourth line were replaced by the word “may”, or if the sentence began with words such as “... may take account of the comprehensive...”.

10. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he wished to prevent the establishment of a precedent in international law; namely, the inclusion in an international convention that was binding on the Parties of a provision calling on them to follow non-mandatory recommendations concerning the action they should take. In that connection he recalled that a number of unsuccessful attempts had been made at the 1987 Conference to make the Outline mandatory.

11. Mr. LeCAVALIER (Canada), speaking as one of the sponsors of the 21-country amendment and as representative of a country that had participated in the 1987 Conference, said that his delegation was strongly in favour of retaining the reference to the Outline as a document which dealt with all aspects of the problem. However, he was prepared to support the United States suggestion and pointed out that, in any case, the reference was qualified by the words “inter alia”.

12. Mr. CABAÑAS (Mexico), referring to the USSR representative’s comments, said that in his opinion, and judging from the English, French and Spanish versions, the wording in question was not mandatory. At the 1987 Conference, thought had obviously been given to all possible measures of reducing demand—that was the reason for the title “Comprehensive Multidisciplinary Outline”—and the USSR delegation itself had suggested and commented on measures which were included in the Outline.

13. Regarding the question of a precedent—not a very compelling argument in his view—he noted that numerous United Nations instruments referred to General Assembly resolutions, for example. And even if a precedent were to be established, it would not be dangerous since the Outline had been adopted by all countries.

14. The purpose of the 21-country amendment was to correct a lack of balance between measures aimed at eliminating production and those aimed at reducing demand; both were essential. The international community had identified a whole series of measures in 1987, and the list adopted contained all those that Governments had considered necessary. Deletion of the reference to the Outline would only vitiate article 10. The paragraph was not mandatory and could not be so construed; it merely stated what kind of measures might be included in national programmes, and Governments were free to select those they thought necessary. He hoped that the United States representative’s suggestion would offer a way out of the difficulty, and that the USSR representative would reconsider his proposal.

15. Mr. de TORRES (Spain) agreed that the Outline should be mentioned, since the measures it proposed would retain their relevance for many years to come. He therefore supported the proposal made by the United States representative.

16. Mr. POPOV (Bulgaria) said that none of the language used in the draft convention corresponded to that in document E/CONF.82/C.2/L.32, and in his view there was a danger that a reference to the Outline would undermine the legal substance of the convention. Moreover, the last sentence of the proposed amendment was very unclear and indeed inappropriate in a binding international legal instrument.

17. His delegation fully agreed with the views expressed by the USSR representative.

18. Mr. BABAYAN (Union of Soviet Socialist Republics) emphasized that his delegation could accept the
amendment in document E/CONF.82/C.2/L.32 provided that the reference to the Outline was deleted. Although the claim had been made that the proposal was essentially recommendatory, the words “should be” in the second sentence of paragraph 3 were clearly mandatory in intent, and therefore unacceptable in that they would establish a precedent.

19. Mr. EDWARDS (United Kingdom) said that he agreed with the points made by the representatives of Mexico and Spain. A compromise approach might be to state that the measures “should be guided, inter alia, by the Comprehensive Multidisciplinary Outline”.

20. He wished to point out that one consequence of adopting that wording would be the deletion of the words “On the basis of this document” in the following paragraph. He did not, in any case, believe that the Outline was an unsatisfactory source of guidance.

21. Mr. WIENIAWSKI (Poland) said that the 21-country amendment quite properly aimed at striking a balance between the need to reduce supply and a concern to curtail demand. However, because the Outline was so comprehensive in scope, it would be better if the reference to it were recommendatory in nature. Similarly, it would be preferable to change the wording of the last sentence along the lines suggested by the previous speaker.

22. Mr. WETUNGU (Kenya) said that the Outline was not binding on States, and that the reference to it should make that clear.

23. Mrs. ROUCHEREAU (France) suggested that the Secretariat might be asked to seek relevant precedents for referring to non-mandatory recommendations and resolutions.

24. Mr. POPOV (Bulgaria) said that, with regard to such aspects as jurisdiction, extradition and preventive measures, precedents could well be sought in the resolutions of the General Assembly and other bodies, but that would entail extensive rewriting of the convention.

25. The CHAIRMAN suggested that the matter might be discussed during informal consultations after the Committee adjourned.

Article 10, paragraph 1

26. Ms. ROMERO (Bolivia) said that her delegation, together with the other sponsors of the amendment contained in document E/CONF.82/C.2/L.29, proposed the inclusion of the following new paragraph 4 in article 10:

“Such measures shall not be less stringent than the requirements applicable to illicit cultivation of plants for the illicit production of narcotic drugs and to the possession and abuse of 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.”

27. She explained that, as the 25-year tolerance period for traditional uses of coca leaves provided for in the 1961 Convention would shortly expire, her country and others in the Andean subregion would have to cope with very serious problems connected with small-scale coca growers.

28. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation could accept the new paragraph proposed by the delegation of Bolivia, as well as the Indian amendment in document E/CONF.82/C.2/L.2, subject to the replacement of the words “controlled substances” by the language that it had been agreed should describe such substances. It also accepted the Colombian amendment in document E/CONF.82/C.2/L.31.

29. Mr. de TORRES (Spain) suggested that it would be more logical to add the amendment proposed orally by Bolivia to the end of paragraph 1 as amended in document E/CONF.82/C.2/L.29, which his delegation supported.

30. Mrs. ROMERO (Bolivia) said that her delegation accepted the Spanish representative’s suggestion.

31. Mr. EDWARDS (United Kingdom) reiterated that his delegation found it very difficult to accept the wording being proposed.

32. Mr. FALLAS (Costa Rica) said that he supported the Bolivian representative’s proposal, including the reference to the 1961 Convention.

33. Ms. GRAHAM (United States of America) said that the idea of making a distinction between coca bushes and other narcotic and psychotropic substances raised serious problems for her delegation, which was of the view that the new paragraph suggested by the delegation of Bolivia would restrict the scope of previous conventions.

34. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation’s amendment and that of the Netherlands were similar in purport. The Bolivian proposal was also acceptable to his delegation and could perhaps be included after paragraph 1, but could equally well be placed at the end of the article.

35. Mrs. ROUCHEREAU (France) said her delegation thought that document E/CONF.82/C.2/L.29, as amended by the Netherlands, United States and USSR representatives, should be used as a basis for the Committee’s discussion because the Bolivian proposal tended to limit the scope of previous Conventions and, as had already been pointed out by the Chairman, the draft convention could not be used to amend the 1961 Single Convention, to which Bolivia was a party.

36. Mr. LECAROS (Peru) emphasized that the sponsors of the amendment did not wish to evade their responsibilities under the 1961 Single Convention.

The meeting rose at 6.05 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 12 (continued)

1. Mr. HARRISON (Australia) announced that the informal working group on article 12 had produced a comprehensive text incorporating the amendments proposed during the debate. He suggested that it should be discussed the following morning.

2. It was so decided.

Paragraph 3

3. The CHAIRMAN read out the proposed text of the paragraph:

"These measures may be based inter alia on the recommendations of international organizations, United Nations, 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."

4. The words "on the basis of this document" would be deleted from the beginning of the second paragraph.

5. Mr. van GORKOM (Netherlands), Mr. TEWARI (India) and Mr. de TORRES (Spain) indicated their delegations' acceptance of the new wording.

6. Mr. POPOV (Bulgaria) said that the compromise text read out by the Chairman was acceptable to his delegation, but felt that, if mention were made of the World Health Organization, the International Maritime Organization should also be referred to.

7. Mr. GUNEN (Turkey), supported by Mrs. ROUCHEREAU (France), said that he was concerned, from a legal standpoint, about the reference to recommendations in the proposed text because they were not specified; it was difficult to accept wording whose implications were so unclear.

8. Mr. LeCAVALIER (Canada) said that the proposed text was acceptable, since it was left to the discretion of each country to consider available alternatives.

9. Mrs. ROUCHEREAU (France) asked whether any previous United Nations conventions contained references to a requirement under international law that was less binding than a convention, such as the Comprehensive Multidisciplinary Outline.

10. Mr. OPOKU (Legal Adviser) said that he had found one instance of a convention which referred to the Universal Declaration of Human Rights and the United Nations Declaration on the Elimination of All Forms of Racial Discrimination.

11. Mrs. ROUCHEREAU (France) did not consider that to be an apt example because such Declarations had at least the force of a convention.

12. Mr. BABAYAN (Union of Soviet Socialist Republics) agreed.

13. Mr. SABOIA (Brazil), speaking as one of the sponsors of the amendment submitted in document E/CONF.82/C.2/L.32, explained that the Comprehensive Multidisciplinary Outline had been referred to in the hope that a list of specific measures would not have to be included in the article.

14. Mr. POPOV (Bulgaria) said that there were instances of conventions which referred to previous conventions that established rules, but wondered whether there were any conventions which referred to previous provisions of a recommendatory nature. The proposed text, although not perfect, could be accepted as a compromise.

15. Mr. BUTKE (Federal Republic of Germany) said that his delegation accepted the text since each country was left free to decide what prevention, treatment and rehabilitation measures should be adopted.

16. Mr. CABAÑAS (Mexico) and Mrs. ROMERO (Bolivia) supported the proposed text as a satisfactory compromise.

17. Mrs. ROUCHEREAU (France) said that, although her delegation would not oppose the consensus, it wished to enter a reservation with respect to the proposed text.

18. Mr. BABAYAN (Union of Soviet Socialist Republics) said that his delegation supported the text as a compromise, but shared the misgivings expressed by the representative of Turkey. The wording of the paragraph made it clear that the Comprehensive Multidisciplinary Outline would not be binding on Parties; that should not, however, set a precedent for the inclusion of similar provisions in future international conventions.
19. Mr. POPOV (Bulgaria) and Mr. GUNGEY (Turkey) endorsed the views expressed by the USSR representative.

20. Mr. YU Jingming (China) expressed his delegation's concern regarding the reference to the recommendations of international organizations because their scope was unknown.

21. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) said it was inappropriate to refer to the Comprehensive Multidisciplinary Outline in such an important international instrument because it was intended to be no more than a text to be consulted.

22. Mr. BABAYAN (Union of Soviet Socialist Republics) emphasized that the Comprehensive Multidisciplinary Outline had not been adopted by the International Conference on Drug Abuse and Illicit Trafficking of 1987, but merely recommended by it.

23. The CHAIRMAN, referring to the point made by the USSR representative, said that, according to the report of the International Conference on Drug Abuse and Illicit Trafficking: "at its twelfth closing plenary meeting on 26 June 1987 the Conference adopted the Comprehensive Multidisciplinary Outline".

24. Mr. ALMOSLECHNER (Austria) said that, although the Outline had been adopted by the Conference, the result had been merely a recommendation and, in that sense, he supported the view expressed by the USSR representative.

25. Mr. CABAÑAS (Mexico), supported by Mr. GUNGEY (Turkey), stressed that the Outline had been adopted by the Conference and embodied a set of recommendations for application by Governments.

26. The CHAIRMAN said that he assumed the Committee was prepared to approve paragraph 3 as amended.

27. It was so decided.

Proposal for a new paragraph 4

28. Mr. TEWARI (India), introducing his delegation's amendment (E/CONF.82/C.2/L.2), said that it was intended to prevent any recycling of seized or confiscated substances on to the illicit market and was in line with the suggestion made in paragraph 267 of the Comprehensive Multidisciplinary Outline. The words "controlled substances" should be replaced by "narcotic drugs, psychotropic substances and substances in Schedules 1 and 2".

29. Mr. BABAYAN (Union of Soviet Socialist Republics), Mr. POPOV (Bulgaria) and Mr. BOROVIKOV (Byelorussuan Soviet Socialist Republic) supported the Indian proposal, as amended.

30. Mr. BUTKE (Federal Republic of Germany), supported by Mr. BABAYAN (Union of Soviet Socialist Republics) and Mr. SUKANDAR (Indonesia) suggested the replacement of the word "samples" by "amounts" or "quantities".

31. Mr. TEWARI (India) suggested the use of the words "duly certified necessary quantities".

32. Mrs. ROUCHEREAU (France) said that her delegation had no problem with the proposed text but wondered whether it was relevant to article 10.

33. The CHAIRMAN said that the amended text of the Indian proposal would read as follows:

"The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drug, psychotropic substances and substances in Schedules 1 and 2 of this Convention which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances".

He assumed that the Committee was prepared to approve it.

34. It was so decided.

The meeting was suspended at 9.10 p.m. and resumed at 9.20 p.m.

Paragraph 4

35. Mr. AGUILAR (Bolivia) read out the wording proposed by the delegations of Bolivia and Peru:

"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 or 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 on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971.

"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 licit uses—where there is historical evidence of such use—as well as the protection of the environment."

36. Ms. GRAHAM (United States of America), Mr. BABAYAN (Union of Soviet Socialist Republics), Mr. POPOV (Bulgaria), Mr. de TORRES (Spain) and Mrs. de la GARZA (Mexico) said that they supported that wording.

37. The CHAIRMAN said he took it that the Committee was prepared to approve that wording by consensus.

38. It was so decided.

The meeting rose at 9.35 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Article 12 (concluded)

1. The CHAIRMAN drew attention to the redraft of article 12 prepared by the informal working group. He said that the text was now available in all working languages.*

2. Mr. HARRISON (Australia), introducing the draft, said that the elements were interrelated and that any improvements adopted should not interfere with the balance reached.

3. The draft proposed by the informal working group was based on three premises: that there was a need for an article 12 in the convention; that the concerns that had been raised had to be met; and that article 12 had to be in entire conformity with the international law of the sea.

4. Paragraph 1 was taken from the original draft in document E/CONF.82/3, with the addition of the phrase “in conformity with the international law of the sea”.

5. Paragraph 2 was the original text in document E/CONF.82/3 as amended in accordance with the proposal of France, which had been accepted by the Committee.

6. Paragraph 3, a crucial paragraph, was carefully worded, containing some elements of paragraph 3 of the basic text. He drew attention to the phrase “freedom of navigation”. In the Committee’s discussion on article 12 the previous week, one of the main difficulties had been the reference to the zones to which paragraph 3 was to apply. The informal working group, after considerable discussion, had agreed that the concept of zones should be abandoned and another formulation found to clarify where the action contemplated in paragraph 3 might take place. The phrase “freedom of navigation” should not be seen as in any way affecting the rights of States to exercise exclusive jurisdiction in their territorial sea.

7. The word “authorization” was deliberately used to stress the positive nature of the decision and of the action which the flag State in the exercise of its sovereignty was to take with regard to its vessel. Nothing in the article was intended in any way to affect the rights of the flag State with regard to its vessel and there was no obligation in the article for a flag State to provide the authorization requested of it: it was entirely at its discretion to decide whether it would allow another State to act against its vessel or not.

8. Paragraph 4 repeated the second part of paragraph 3 in the basic text by prescribing the sorts of action that might be taken either pursuant to an authorization given under paragraph 3 or pursuant to or in accordance with any agreement or arrangement or any treaties in force between the Parties concerned. It also highlighted the disjunctive nature of the various processes which might be taken against the vessel: boarding; search; and—only if evidence of illicit traffic were found—any further action. The word “seizure” had deliberately been omitted.

9. Paragraph 5 was designed to meet the concerns of all States that might be affected by the action contemplated in paragraphs 3 and 4, to ensure that the vessel itself was not endangered, that its crew and cargo were at all times protected, and that the legal rights and commercial interests of the Parties using the vessel were protected.

10. Paragraph 6 was intended to meet the concerns of States on the question of liability. The word “responsibility” was used because it was considered more acceptable in meeting the requirements of different legal systems.

11. Paragraph 7 was drawn from paragraph 4 of the basic text in document E/CONF.82/3.

12. Paragraph 8 was drawn from paragraph 6 of document E/CONF.82/3 and paragraph 9 from paragraph 7 of that document.

13. Paragraph 10 was based upon an amendment proposed by the Federal Republic of Germany (E/CONF.82/C.2/L.10). The concept, but because of lack of time not the wording, had been agreed by the informal working group. The proposed text had been prepared by two or three delegations in consultation but it was open to further examination.

14. Paragraph 11 was perhaps the most crucial paragraph. Several States had been extremely concerned that article 12 as originally drafted might adversely affect their rights and obligations as set out in the Convention on the Law of the Sea. Paragraph 11 was designed to ensure that there was no effect on those rights and obligations resulting from the exercise of the rights and obligations set out in article 12. The new draft was the result of very careful and constructive thought by a number of delegations.

15. The CHAIRMAN said that the text seemed to be a balanced one and urged delegations not to amend it.

*For the text, see document E/CONF.82/C.2/L.13/Add.11, para. 8.
16. Mr. de la GUARDIA (Argentina) thanked the members of the informal working group, in particular the Australian representative, for their hard work.

17. Paragraph 11 was a result of a compromise between very different stands. It took account of all situations and his delegation was prepared to accept it. However, his delegation would have preferred the original text, with the mention of zones, in document E/CONF.82/3.

18. Regarding paragraphs 3 and 4 of the new draft, he said that, with the disappearance of the concept of seizure which had been included in the original draft, it was no longer clear what the "appropriate action" mentioned in paragraph 4(c) was.

19. Regarding the Spanish version, he proposed that the expression "derecho marítimo internacional" used in paragraphs 1 and 11 as the equivalent of "international law of the sea" should be replaced by "derecho internacional del mar", and that, in paragraph 11, the words "la necesidad de no interferir", corresponding to "the need not to interfere", should be replaced by "la necesidad de no injerirse".

20. Mr. SABOIA (Brazil) endorsed the remarks made by the representative of Australia. The compromise text proposed was carefully balanced; even a change in the position of a paragraph might alter its meaning for some delegations.

21. The Brazilian delegation was ready to participate in the consensus adoption of the text.

22. Mr. TEWARI (India) congratulated those who had formulated the compromise draft. He would join in the consensus, but had some comments for the record concerning paragraph 11.

23. Article 33 of the United Nations Convention on the Law of the Sea provided that a coastal State might exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea and punish infringement of those laws and regulations committed within its territory or territorial sea. The lack of a specific reference to that Convention might jeopardize the economic interests of coastal States. Because Indian customs waters extended to the limit of the contiguous zone, in which enforcement action was authorized as in any other part of the territory, his delegation had wished for a specific reference to the United Nations Convention on the Law of the Sea in article 12. In the present draft all reference to zones had been omitted. It was therefore all the more necessary that the safeguard clause (paragraph 11) should have contained an unambiguous reference to protection of the rights of coastal States in the contiguous zone which, inter alia, would have included EEZ. As now worded paragraph 11 was open to misinterpretation.

24. Mr. SZEKELEY (Mexico) recalled his delegation's fears that a conflict might arise between the new Convention and the United Nations Convention on the Law of the Sea. A fragile balance had now been achieved on the basis of concessions by all delegations. He thanked the informal working group for its redraft, which he fully supported.

25. Mr. STEWART (United States of America) thanked the Australian and Mexican representatives for their work in producing a redraft of article 12. His delegation's preference would, however, have been for the original text in document E/CONF.82/3, which did not prejudice the rights of any States.

26. Paragraph 3 of redrafted article 12 contained the phrase "a vessel exercising freedom of navigation in accordance with international law", which had been used to avoid mention of zones. His delegation would like that phrase to be amended to read: "a vessel operating where vessels may exercise freedom of navigation". His understanding was that the area in question was beyond the territorial sea.

27. He also suggested that, with respect to the notion of marks of registry, paragraph 3 should be brought into line with paragraph 2. He proposed the addition in paragraph 3, between the word "flag" and the words "of another Party", of the words "or displaying marks of registry" and, as a consequential change, the replacement of the words "notify the flag State and request" by the words "notify the flag State, request confirmation of registry and, if confirmed, request".

28. Paragraph 4 seemed to imply that the actions listed in subparagraphs (a) to (c) were exhaustive, which was clearly not the intention. He therefore proposed the insertion of the words "inter alia" after "the flag State may" in the third line of that paragraph.

29. In paragraph 6 his delegation would like the words "including conditions relating to responsibility" to be deleted. A flag State might impose any kind of condition it wished consistent with its obligations in paragraph 1. To mention any particular type of condition was unnecessary and might lead to problems of interpretation.

30. He understood that the intention in paragraph 10 was to repeat the wording used in article 23, paragraph 4, of the Convention on the High Seas and article 111, paragraph 5, of the Convention on the Law of the Sea which referred to "warships or military aircraft clearly marked and identifiable as being on government service"; and he proposed that that wording should be adopted for paragraph 10.

31. The intent of paragraph 11 was to set aside any implication that the new convention was seeking to change the international law of the sea, but his delegation was troubled by the paragraph's exclusive focus on coastal States, which seemed to carry the negative implication that the rights of other States might not be protected. That was clearly not the intention. He therefore proposed amending the paragraph to read: "Any action taken in accordance with this article should take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of States..."
Parties, including coastal States Parties, in accordance with the international law of the sea."

32. Mr. PARDOS CAÑABATE (Spain) thanked the informal working group for its efforts and supported the new text proposed.

33. He had a small amendment to propose to paragraph 3. His delegation considered that the concept "reasonable grounds to suspect that a vessel ... is engaged in illicit traffic" ("... se dedica al tráfico ilícito") was too wide. He therefore proposed the more restrictive wording "... is engaged in illicit traffic at a given moment".

34. He could accept the amendments proposed by the United States representative to paragraph 3.

35. Mr. BARNETT (Jamaica) thanked the informal working group for having produced a satisfactory compromise text.

36. His delegation believed that the Convention on the Law of the Sea was the appropriate basis for the determination of matters relating to the law of the sea, particularly in relation to zones and the jurisdiction that they implied, and it was happy that some recognition of the zones was implicit in paragraph 11, but was not inclined to accept the United States proposal to include the words "all States Parties including" after the words "jurisdiction of" in that paragraph.

37. He wondered why the word "aircraft" had been included in paragraph 10, which was supposed to be linked to the "appropriate action" in paragraph 4, which was itself linked with paragraph 3, and what the effect of paragraph 10 was on the article as a whole.

38. His delegation considered that the exercise of responsibility by the coastal State ought not to be jeopardized by any action taking place between the requesting State and flag State; it must always be informed of and involved in such action.

39. His delegation could accept the United States amendment concerning marks of registry in paragraph 3 but, regarding the amendment proposed in paragraph 4, he wondered whether the words "inter alia" should not be placed after the words "authorize the requesting State to" rather than after "the flag State may".

40. Mr. WUNDERLICH PIDERIT (Chile) thanked the representatives of Australia and Mexico for their work on the redrafted article 12, which his delegation supported.

41. He pointed out that the wording of paragraph 10 was based on article 107 of the Convention on the Law of the Sea.

42. The expression "including conditions relating to responsibility" in paragraph 6 was extremely important and should be retained.

43. He proposed that the Spanish version of paragraphs 1 and 11 should be amended as suggested by the representative of Argentina.

44. It was so agreed.

45. Mr. SUKANDAR (Indonesia) said that the new drafting of article 12, particularly paragraph 11, reflected the complexity of the problem and the efforts involved in finding a balanced and acceptable text. The formulation proposed was a very general one. His delegation, while accepting that formulation in a spirit of compromise, wondered whether the text would provide sufficient guidance to those who would have to implement it.

46. As to the need not to affect the rights, obligations and extent of jurisdiction of coastal States in accordance with the international law of the sea, he believed that the intention was not to affect those rights primarily beyond the contiguous zone. That view was based on article 33 of the 1982 United Nations Convention on the Law of the Sea.

47. The new formulation of article 12 was acceptable to his delegation; any changes made in it should be linguistic and not substantive.

48. Mr. TANAKA (Japan) said that the proposed reformulation of article 12 was a very carefully drafted compromise accepted by all Parties. On the understanding that paragraph 11 would not be invoked to affect the rights of the coastal State under international law, his delegation was ready to join the consensus on accepting the proposal. It could accept the United States proposal to amend the words "coastal States" to read "States Parties including coastal States Parties" in paragraph 11.

49. Mr. FERRARIN (Italy) said that his delegation wished for absolute consistency between the text in the basic document and the current law of the sea. Taking into account the need to accommodate the position of other delegations, he thought that the text proposed by the informal working group was well balanced and he would be in favour of its adoption by consensus.

50. He had no difficulty in accepting the amendments proposed by the United States and Spanish representatives.

51. Mr. SIBLESZ (Netherlands) said that his delegation would have preferred the text of article 12 in document E/CONF.82/3, but since the new formulation met the concerns of the various delegations including his own he could accept it.

52. The proposed United States amendments to paragraphs 3 and 4 would improve the text.

53. While agreeing with the substance of the amendments proposed by the United States to paragraphs 6 and 11, he considered that the present language reflected a balance that had been hard to achieve and he would be reluctant to see the debate on those paragraphs reopened.

54. With respect to the proposed amendments to paragraph 11, while he agreed with the logic of the United States position, the powers, authority and jurisdiction of States other than the coastal State were adequately
covered under the preceding paragraph and he could therefore accept paragraph 11 as it stood.

55. In paragraph 7 Parties were requested to designate an authority to act as a channel for requests under the preceding paragraphs. In dealing with paragraph 6 of article 5 on mutual legal assistance, which also requested Parties to designate an authority, Committee I had agreed to include a phrase allowing the designation of more than one authority under certain conditions. He suggested that similar language should be adopted in paragraph 7, which should be amended to read: "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".

56. A consequential amendment should be made to the last sentence of the paragraph, the words "The authority designated by each Party for this purpose shall be notified" being replaced by "Such designation shall be notified". A similar amendment had been adopted by Committee I in connection with article 5, paragraph 6.

57. Mr. Lavina (Philippines) thanked the members of the informal working group for having produced a compromise text for article 12. His delegation was prepared to join the consensus on that text and shared the views expressed by the representatives of Brazil and India.

58. His delegation's understanding concerning paragraph 11 was that any action taken in accordance with article 12 should not interfere with or affect the rights and obligations and extent of jurisdiction of coastal States under the Convention on the Law of the Sea. In that connection he endorsed the statements made by the representatives of India and Indonesia.

59. The proposed amendments, some of which were interesting, might disturb the balance achieved, but he was prepared to discuss them if the Committee so decided. He agreed with the point made by the Netherlands representative concerning the proposed amendment by the United States to paragraph 11.

60. He accepted the Netherlands amendment to paragraph 7 concerning the designation of authorities, which should be passed on to the Drafting Committee.

61. He reserved his right to speak again if the discussion on the consensus was reopened.

62. Mr. Gaspar (Portugal) thanked the informal working group for its work, but said that the formulation agreed upon did not fully meet his delegation's concerns.

63. His delegation considered that both because of its scope and the danger of potential conflict, article 12 would affect the balance on which the international law of the sea was based, which must be preserved. Boarding and searching a vessel were exceptional measures which might well lead to conflict especially when other States had rights in the same maritime zone.

64. In a spirit of compromise, his delegation was prepared to accept the consensus, but any amendment to the wording of paragraph 11 would disturb the delicate balance achieved and be very difficult for him to accept.

65. Mr. Gonzalez (Cuba) considered that the re-drafted article 12 was much better than the original text in document E/CONF.82/3. However, the measures in paragraphs 4 and 5 would be hard to apply to merchant shipping and were likely to affect maritime trade, in particular for developing countries with no merchant fleet or with limited tonnage, which had to use ships flying foreign flags for their foreign trade. His delegation considered that the measures proposed might give rise to other problems in other areas. Nevertheless it would not oppose the consensus.

66. Mr. Zurita (Venezuela) said that his delegation had originally been in favour of the text of article 12 in document E/CONF.82/3, but the text presented by the informal working group was well balanced and each paragraph was so drafted as to take account of all the concerns expressed. His delegation fully supported that text and he endorsed the Chairman's appeal not to disturb its fragile balance.

67. Mr. Vall (Mauritania) said that his country had just ratified the Convention on the Law of the Sea and had had to make great efforts to adapt its legislation to that instrument. His delegation would have liked a more explicit reference in paragraph 7 to the rights of the coastal State to protect its interests in areas defined by the Convention on the Law of the Sea. Those interests were continually under threat because of a certain fashion of interpreting international law.

68. He endorsed the United States amendments to paragraphs 4 and 6 of the redraft.

69. His delegation believed that there should be the clearest provisions to ensure that the fight against illicit traffic at sea was effective within the framework of the Convention on the Law of the Sea, and it would join the consensus.

70. Mr. Hugler (German Democratic Republic) welcomed the proposed redraft of article 12 and supported the appeal to retain the balance achieved.

71. His delegation had some problems with the words "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" in paragraph 7. That wording was based on the original proposal for article 12. However, proof of the link between the ship and the flag State was not the registration of the vessel under the national law of the flag State but its nationality. According to article 91, paragraph 1, of the Convention on the Law of the Sea, a ship had the nationality of the State whose flag it was entitled to fly. Article 7 should therefore be amended by replacing the words "is registered under its law" by the words "is entitled to fly its flag".
72. Mr. TEWARI (India) agreed with the substance of the compromise redraft. He could accept the proposed linguistic amendments but not the amendments of substance; in particular, he could not accept the United States amendment to paragraph 11.

73. He agreed with the Indonesian representative’s interpretation of paragraph 11, i.e. that the rights and obligations and extent of jurisdiction of coastal States under the United Nations Convention on the Law of the Sea and the rights conferred on them in the EEZ would not be affected in the contiguous zone.

74. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that his delegation, a member of the informal working group, had had serious concerns regarding the right of coastal States up to the limit of the EEZ. His delegation joined the consensus on the redrafted article 12 as it stood, but could not accept any changes, and especially not to paragraph 11.

75. Mr. SABOIA (Brazil) said that his delegation had always desired to preserve the balance of rights and obligations, in particular those of the coastal State with regard to certain zones specified in the Convention on the Law of the Sea.

76. The proposed United States amendment to replace the words “a vessel exercising freedom of navigation” by “a vessel operating where vessels may exercise freedom of navigation” would by implication reintroduce the question of zones and disturb the balance of the compromise text.

77. With respect to the United States amendment to paragraph 6, he said that the words “including conditions relating to responsibility” replaced a whole paragraph. The proposal to eliminate them would present problems for a number of delegations.

78. Paragraph 11, the most delicate part of the compromise, took into account the concerns of coastal States with regard to their rights. The working group had made a conscious effort at flexibility, and the United States amendment would create enormous problems and possibly reopen the whole discussion.

79. Mr. BUTKE (Federal Republic of Germany) expressed regret that the United States representative was reopening the discussion on paragraph 6. The question of responsibility was a crucial one, since in most cases the flag State would not be prepared to give its authorization if it could not be assured that damage caused by unjustified measures would be compensated. His delegation could not accept paragraph 6 without the mention of conditions relating to responsibility.

80. His understanding was that normally the condition relating to responsibility in an agreement would be consistent with paragraph 1.

81. He could agree to the other amendments proposed by the United States.

82. Mr. WETUNGU (Kenya) said that redrafted article 12 was clear and largely acceptable. He would, however, prefer to see the word “ships” in the first line of paragraph 10 replaced by the word “vessels”.

83. Mr. DZIOUBENKO (Union of Soviet Socialist Republics) said that his delegation would have preferred the original text of article 12, but would not oppose the consensus, on the understanding that it was without prejudice to the general principles of international law and his country’s approach to them.

84. He asked whether article 12 presupposed that the flag State had the right to subject any authorization it gave for any action in regard to its vessel to some kind of arrangement or agreement.

85. He had no difficulty with the proposed amendment to paragraph 6 and could support the Netherlands amendment to paragraph 7 and the United States amendment to paragraph 11, which he did not think would disturb the balance of the consensus or in any way detract from the rights of coastal States.

86. Mr. ASBALI (Libyan Arab Jamahiriya) wondered what had happened to the paragraphs of the article which had been adopted earlier with minor amendments. He had raised certain points during the earlier discussion. Provision needed to be made concerning the consequences to the shipowner if drugs or other material were found on board his vessel and any prejudice to his rights if nothing was found. It was also unclear whether the search could be carried out in the ship’s country of destination if that was not a State Party and whether the vessel could be sent to a State Party if there was any doubt. His delegation reserved its position on the article.

87. He suggested that in paragraph 2 the wording “reasonable grounds to suspect” should be amended to “good grounds to suspect”.

88. Mrs. ROUCHEREAU (France) said that her delegation would have preferred the initial text in document E/CONF.82/3 with the addition of the paragraph 3 bis proposed by her delegation referring to the rights of the coastal State in the contiguous zone.

89. She endorsed the comments of the representative of Argentina concerning paragraph 11 of the new draft, particularly in connection with the rights of coastal States in the contiguous zone.

90. Her delegation accepted the compromise draft and supported the proposal to refer in paragraph 10 to warships and military aircraft, as in article 107 of the Convention on the Law of the Sea.

91. She also supported the Netherlands amendment to paragraph 7 and could accept the United States amendment to paragraph 3.

92. With respect to the United States amendments to paragraphs 6 and 11, since those paragraphs were the result of a difficult compromise it would be better not to
change them. France, like the United States, would have preferred no explicit reference to the question of responsibility.

93. Mr. SAVOV (Bulgaria) said that his delegation would have preferred the original text in document E/CONF.82/3 but was ready to join the consensus on the compromise text submitted by the informal working group.

94. The text of article 12 had to be in line with the Convention on the Law of the Sea. Paragraph 10 should be understood in the sense of article 107 of the Convention on the Law of the Sea. However, he could not understand how ships or aircraft other than those mentioned in that Convention would have the right to take the action contemplated and wondered why the requirements were not more specific.

95. The United States amendment to paragraph 11 was superfluous and he agreed with the remarks of the Netherlands representative in that regard.

96. His delegation understood the words “in accordance with the international law of the sea” as meaning “in accordance with the International Convention on the Law of the Sea”, and would support the text on that understanding.

97. He supported the proposal of the representative of the German Democratic Republic to amend the wording in paragraph 7 to read “a vessel entitled to fly its flag”.

98. Mr. EDWARDS (United Kingdom) said that his delegation would have preferred the original text of article 12 in E/CONF.82/3 but was prepared to accept the compromise text.

99. Turning to the proposed amendments, he said that the omission of the reference to marks of registry in paragraph 3 was probably involuntary, but he had doubts as to whether it was really necessary to include a reference to confirmation of registry, and considered that the reference in paragraph 7 would suffice.

100. His delegation could accept the United States amendments to paragraphs 6 and 11 or the compromise text. His understanding of paragraph 11 was that it was not intended to be construed as meaning that the rights, obligations and jurisdiction of States other than coastal States were in some way affected by the wording. The reference to coastal States had been included to meet the concerns of a number of delegations.

101. He agreed with the Netherlands representative in interpreting paragraph 6 in the light of the main object of the article as set out in paragraph 1.

102. He supported the Netherlands amendment to paragraph 7.

103. Mr. Opara (Nigeria) said that the redraft represented a good compromise and was well articulated in terms of substance. He agreed with the Netherlands representative on the need to include in paragraph 7 the phrase “or, when necessary, authorities” and also with the United States amendments to paragraphs 3 and 4. However, so far as paragraphs 6 and 11 were concerned, any rewording of the redraft would disturb the fragile balance achieved and he could not therefore support the amendments proposed by the United States.

104. Mr. QI BAOXIN (China) thanked the informal working group for its efforts to overcome the problems of article 12. The proposed redraft was acceptable to his delegation and he hoped that it would be adopted, perhaps with some improvements, by the Committee in a spirit of co-operation.

105. Mr. HARRISON (Australia), having thanked all those who had expressed their appreciation of the redraft, said that the Committee was close to reaching a consensus on the text.

106. With respect to the proposed amendment to the first part of article 3, in his view the phrase “exercising freedom of navigation” was crucial. To change it would risk reopening the entire debate, and he therefore urged the United States representative to withdraw the amendment.

107. The proposal concerning marks of registry and the request for information was constructive and should be adopted, although he agreed with the United Kingdom representative that the question of confirmation was adequately covered by paragraph 7. That might perhaps be an issue for the Drafting Committee.

108. The United States representative had proposed to add the expression “inter alia” in paragraph 4 between the word “may” and the word “authorize”. The purpose of paragraphs 3 and 4 was to give the maximum flexibility to the flag State and the requesting State to take the action which they both agreed was necessary. There was no intention to limit the action they might take and no intention to interfere with the sovereign right of the flag State to take action as it deemed fit. The phrase “inter alia” would therefore be appropriate in paragraph 4 to make it clear that the States concerned might take other action.

109. In reply to the USSR representative, he said that if a flag State insisted on entering into agreements or arrangements before it would consent to or authorize the action requested, it was entirely within its competence to do so.

110. A number of speakers had stressed that it was very important that the question of responsibility be addressed in paragraph 6. It had been so addressed in the most general terms, and those who had proposed wording on liability had compromised greatly to enable the present text to be arrived at. The Australian delegation considered that the words “including conditions relating to responsibility” should be retained, and he urged the United States representative to withdraw its amendment in that regard.
111. He supported the amendments proposed by the delegations of the German Democratic Republic and the Netherlands to paragraph 7.

112. Concerning paragraph 10, for his part he would have no difficulty in accepting the United States proposal to use the language of the Convention on the Law of the Sea.

113. The most important amendment proposed was to paragraph 11. Paragraphs 3 and 11 were linked. It was the concern of the coastal States that paragraph 3 might lead to a derogation of the rights and obligations which they were entitled to exercise under the international law of the sea. They therefore felt that their particular situation needed to be taken into account, and it was for that reason that paragraph 11 made specific mention of coastal States.

The language of article 11 was part of the compromise reached. There was nothing in the convention designed to affect the rights of other States, but the question of the rights of coastal States was a crucial one. There was no intention on the part of the drafters of the article to derogate from the rights of any State under paragraph 11, but he believed that the language of that paragraph must be retained since many coastal States believed that their special concerns had to be treated specifically. He therefore urged the United States delegation not to press its amendment to paragraph 11.

114. Mr. SZEKELY (Mexico) said that after over a week's discussion a compromise draft had been produced. If any part of that text was changed the whole compromise would be affected. He endorsed the appeal of the Australian representative, considered that the record should make clear the preferences of delegations, and hoped that the text could be approved by consensus.

115. Mr. STEWART (United States of America) stressed that it was not his delegation's intention to tear down a structure that had been built with such difficulty and care but merely to improve it.

116. His delegation would not insist on its first proposed amendment to paragraph 3.

117. With respect to paragraph 6, given the tenor of the discussion his delegation would not press its proposal to delete the last five words but wished to indicate that any conditions mutually agreed were allowable.

118. With respect to paragraph 11, he said that his delegation's intention was to continue to protect the rights of coastal States to the extent that they existed or would be created in the future, although there was of course a difference of view about the extent and nature of such rights. On the understanding that the fact that coastal States' rights and obligations were specifically treated in paragraph 11 did not negatively prejudice the question of other States' rights and obligations, his delegation, in response to the representative of Australia's appeal, would not insist on its amendment.

119. He suggested that paragraph 7 should be amended in the manner proposed by the German Democratic Republic and the Netherlands.

120. It was so agreed.

121. Mr. STEWART (United States of America) said he did not think that his proposal to add the words "or displaying marks of registry" in paragraph 3 and to replace the words "notify the flag State and request" in the same paragraph by the words "notify the flag State, request confirmation of registry and, if confirmed, request", or his proposal to amend paragraph 10 in the light of existing conventions, had given rise to problems. Perhaps those changes could be accepted.

122. It was so agreed.

123. Mr. BARNETT (Jamaica), referring to the amendment to paragraph 4 proposed by the United States representative, said that the placing of the expression "inter alia" between the word "may" and the word "authorize" in paragraph 4 would imply that the flag State could do other things than authorize the action to be taken in subparagraphs (a), (b) and (c). On the other hand if, as he had suggested, "inter alia" were placed after "may authorize the requesting State to", then (a), (b) and (c) would be among the other actions that might be taken.

124. Mr. STEWART (United States of America) said that that was a very helpful suggestion; he agreed that the words "inter alia" should be inserted after "may authorize the requesting State to".

125. It was so agreed.

126. The CHAIRMAN said that, if the text could now be adopted, he would invite delegations to hand in any statements and reservations in writing for inclusion in the summary records.

127. Article 12, as amended, was adopted.

128. The CHAIRMAN thanked the representative of Australia and all the delegations that had enabled the Committee to reach a consensus and thus ensure that the convention would be functional.

The meeting rose at 1.25 p.m.

*See annex.
STATEMENTS IN CONNECTION WITH THE ADOPTION OF ARTICLE 12

(The statements summarized below in connection with the adoption of article 12 were submitted in writing by delegations, in response to the Chairman's invitation.)

The delegation of CANADA said in its written statement that paragraphs 3 and 4 of the text adopted provided for the flag State or State of registration to authorize a requesting State to take certain measures in respect of vessels suspected of being engaged in illicit traffic. It was the Canadian Government's practice, when responding to such requests, not to grant permission but rather to express no objection should the requesting Party demonstrate reasonable grounds for such measures. Canada believed that that practice was consistent with the intention of paragraphs 3 and 4 and met the obligations set out therein.

The delegation of INDIA said that the text relating to the rights and obligations and exercise of jurisdiction by coastal States as contained in paragraph 11 of article 12 had been considerably weakened. Pointing out that article 12 as adopted omitted all reference to the various marine zones, the Indian delegation stressed the importance of strengthening paragraph 11 to ensure that the rights and obligations and exercise of jurisdiction of coastal States which were obtained after prolonged and careful negotiation under the United Nations Convention on the Law of the Sea of 1982 were not adversely affected.

While joining in the consensus, the Indian delegation reiterated its preference for the wording as contained in paragraph 3 of the original Secretariat version of article 12 (contained in document DND/DCIT/WP.I, which read "and is on the high seas as defined in Part VIII of the United Nations Convention on the Law of the Sea").

The Indian delegation stated that according to its understanding the adopted version of article 12 would not be applicable to the Indian customs waters. It was informed that, under the Indian Customs Law, the "Indian customs waters" extended into the sea up to the limit of India's contiguous zone.

The delegation of JAPAN said that the Japanese delegation, with the understanding that article 12 would in no way be invoked to affect the rights of coastal States under international law, would join in the consensus adoption of article 12.

The delegation of the UKRAINIAN SOVIET SOCIALIST REPUBLIC said that it would have preferred to see the text of article 12 of the Convention in the form submitted to the Conference in document E/CONF.82/3. That text was in conformity with one of the most important principles of the international law of the sea—the principle of freedom of navigation.

However, it had not opposed the consensus on the text prepared by the working group. Without wishing to mention all the amendments submitted during the debate on the working group's text, it would like to point out that the amendment to paragraph 11 submitted by the United States would have improved the text of article 12.

As his delegation understood paragraph 4, the flag State had the right to make any action against its vessels dependent on a relevant agreement or arrangement; the provisions of the paragraph must in no way be used to justify the taking of any action against a vessel without the permission of the flag State.

The delegation of the Ukrainian SSR accepted paragraph 11 in the light of the explanation given by the representative of Australia that the drafters did not intend to prejudice the rights of any State.
4. The Working Group had also considered an amendment by the Philippines (E/CONF.82/C.2/L.17), amendments by Japan (E/CONF.82/C.2/L.34), and amendments by Turkey (E/CONF.82/C.2/L.24). Those that had attracted wide support had been incorporated in the Working Group’s text.

5. As could be seen from article 20, the convention was open to all States, to Namibia, represented by the United Nations Council for Namibia, and to regional economic integration organizations. Some delegations had expressed the opinion that it was no longer necessary to refer expressly to Namibia, as represented by the United Nations Council for Namibia, in view of recent developments and as the Council for Namibia was in no position to exercise the rights and duties of the convention. The majority, however, had been of the view that the reference should be retained, as it reflected not only the most recent United Nations treaty practice, but also the current legal situation. The Working Group, while taking due note of the remarks and reservations of the delegations favouring deletion of the provision, had decided to retain it.

6. The other issue that had arisen in connection with article 20 was whether the convention should be open only to States or also to the regional economic integration organizations indicated in article 20(c). The Review Group had added a provision enabling such organizations to become Parties. The Philippines amendment would have limited accession to the convention to States. It had been argued that the convention dealt primarily with penal matters which were solely within the competence of States and therefore that the role of the regional economic integration organizations would be limited. That view had not enjoyed majority support and the amendment had been withdrawn. The Final Clauses therefore contained appropriate provisions reflecting the possibility of the regional economic integration organizations concerned becoming parties to it. It had also been decided that articles 21 and 22 should include paragraphs describing the extent of the organizations’ competence regarding matters governed by the convention.

7. It was the understanding of the Working Group that the word “regional” should be interpreted in the widest sense to cover groupings of States, including subregional groups.

8. Discussions on article 23, dealing with entry into force, had revealed a consensus that it was desirable to bring the convention into force as soon as possible and that the number of instruments that had to be deposited for that purpose should not be unduly large. The Working Group had opted for 20 instruments and agreed that, to permit States to complete all necessary domestic legislative formalities, 90 days should elapse between deposit of an instrument and entry into force in respect of the depositing entity.

9. The two versions of the Final Clauses which had formed the basis of the discussions had contained a clause relating to the territorial application of the convention. A few delegations had wished to retain the clause, but the majority had been of the opinion that it was no longer appropriate in the current world situation. Those favouring retention had joined the consensus and the Working Group had decided to omit the clause.

10. Discussions on article 24, dealing with denunciation, had centred on the issue of whether a Party, in the interests of stability in treaty relations, should be obliged to remain a Party for a number of years before it could denounce the convention. It was pointed out that, even after notification, such denunciation would only take effect after a period of one year. It had been agreed by consensus to adopt a clause which did not contain any time requirements in article 24, paragraph 1.

11. Article 25 on amendments had been the subject of considerable discussion, and a preference had emerged for a clause that would place the amendment procedure largely in the hands of the Parties rather than of a body such as the Economic and Social Council, in which non-Parties might predominate. A suggestion by the Netherlands had been endorsed by the Working Group as article 25, which laid down procedure for circulation of a proposed amendment and for its entry into force after a considerable period if no Party objected to it. Some representatives had emphasized that, because of constitutional requirements, they were not generally in favour of the “tacit approval” of amendments provided for in the article. Any State could object to a proposed amendment and would thus not in any way be bound without its consent, and the two-year period in paragraph 1 would give a State sufficient time to complete necessary legislative procedures before an amendment entered into force. Those representatives which had expressed their concern had agreed that, provided their views were placed on record, they would not oppose a consensus on the article.

12. In response to specific questions from the Japanese representative, the Legal Consultant had explained that in no case would a State be bound by an amendment without its consent. He had added that, under the “tacit approval procedure”, States had the unrestricted right to object during a two-year period; moreover, if an amendment were submitted to a conference, the results of that conference would have to be embodied in a protocol of amendment, to which any State could refuse to become party if it did not approve of the amendment. The representative of Japan had then withdrawn his amendment to this article.

13. The two sets of Final Clauses had contained several variants of a clause, which would have permitted reservations to certain clauses that remained to be specified. Some delegations had felt that the convention should contain a provision indicating that no reservations whatsoever were permitted; others had taken the view that the right to enter reservations which were not contrary to the subject and purpose of the convention should be maintained. It was agreed that, as it would be exceedingly difficult and time-consuming to enumerate in the Final Clauses those articles to which reservations were or were not permitted, the reservations clause should be omitted and the matter left to be dealt with in accordance with the rules of international law relating to reservations, which
were absolutely clear since the adoption and entry into force of the 1969 Vienna Convention on the Law of Treaties. One delegation had continued to favour a clause permitting no reservations, but did not object to a consensus in favour of a recommendation that the convention should not contain a reservations clause. The delegations of the Philippines, the Islamic Republic of Iran and the Federal Republic of Germany reserved their position on the matter.

14. During the discussion of article 26 on the settlement of disputes the United States representative had suggested combining various features of variants A and B in document E/CONF.82/C.2/L.16. Although some representatives preferred one or other variant, there was no objection to proposing the United States suggestion as a consensus proposal. The delegations of Argentina, Bolivia, France and Spain reserved their position.

15. Article 26 incorporated the Turkish amendments (E/CONF.82/C.2/L.24). The second of those amendments, to the effect that the unilateral instrument referred to in paragraphs 4 and 5 should be described as a "declaration", rather than a "reservation", had given rise to considerable discussion. It had been generally agreed that such a declaration had the full effect of a reservation and that, in view of the Vienna Convention on the Law of Treaties, which defined a reservation, however named, use of the word "declaration" was not inappropriate.

16. Article 27 on authentic texts was self-explanatory.

17. Article 28 was extremely simple and merely provided that the Secretary-General of the United Nations was the depository of the convention. The Legal Consultant had informed the Working Group that, since the adoption of the 1969 Vienna Convention on the Law of Treaties, the Secretary-General had advised against detailed articles on notification, transmission of certified copies, etc. and had brought his practice into line with the requirements of that Convention.

18. In conclusion, he expressed the hope that a consensus could be achieved on the Final Clauses recommended in document E/CONF.82/C.2/L.43.

Articles 20-28 (E/CONF.82/C.2/L.43)

19. Mr. AGUILAR (Bolivia) said that his delegation had certain reservations regarding former articles 25 and 26.

20. Mr. STEWART (United States of America) said that his delegation had been one of those which had had very strong feelings about making an express reference to the Council for Namibia, being of the view that it would serve no purpose and would be of doubtful legality to invite the Council for Namibia to accept responsibilities that it was manifestly unable to fulfill. Moreover, such an invitation might interfere with negotiations under United Nations Security Council resolution 435, which envisaged no role for the Council.

21. However, if there was a consensus in the Committee to retain the reference to the Council for Namibia, his delegation would not oppose it, although it would maintain its reservation.

22. Mr. LAVIÑA (Philippines) said that his delegation wondered whether it would be the depository or the Parties that would determine whether an entity signing, ratifying or acceding to the convention was a State from the standpoint of article 20, subparagraph (a), and also why subparagraph (b) comprised only the United Nations Council for Namibia.

23. The same question arose in connection with subparagraph (c) which was restricted to regional economic integration organizations, and his delegation wondered whether it was appropriate for such organizations, which could not discharge the duties and obligations imposed by the convention, to become parties to it.

24. In that connection he drew attention to his delegation's amendment in document E/CONF.82/C.2/L.17, which restricted accession to the convention to States as defined in international law. If that were not done, difficulties might arise regarding reservations, because it was doubtful whether some States Parties would accept reservations made by Parties that were not States. Since the 1986 Law of Treaties between States and international organizations and between international organizations had not yet come into force, his delegation proposed the application of the 1969 Convention on the Law of Treaties; it was, however, prepared to accept the consensus view on the matter.

25. Mr. EDWARDS (United Kingdom) congratulated the Working Group on its report.

26. Referring to article 20, he reserved his Government's position on the inclusion in the convention of a reference to Namibia's ability to sign the convention. On the other hand, his delegation was in favour of a reference to regional economic integration organizations, since there might be parts of the convention in respect of which some of those organizations had competence.

27. With regard to subparagraph (a), his delegation understood that the reference to all States was now standard in all United Nations conventions and had been for the past 15 or 16 years. In that connection it felt that there were some points in the Philippines representative's statement which it would not be prudent for the Committee to pursue in any detail, because it should avoid becoming involved in political matters.

28. His delegation supported article 20 subject to its reservation concerning subparagraph (b).

29. Mr. BABAYAN (Union of Soviet Socialist Republics) welcomed the consensus that had produced the well-balanced and comprehensive articles set forth in document E/CONF.82/C.2/L.43, despite differences of view on specific points. He hoped that the question of Namibia would not be reopened and wondered whether the Legal Consultant to the Executive Secretary could confirm his
belief that there were legal precedents for mentioning Namibia in conventions since 1980.

30. Mr. VALL (Mauritania) said that he had no difficulty with the reference to Namibia. The United Nations had already given the Council for Namibia the task of protecting the essential interests of the Namibian people, and the Council was specifically named in other conventions. In any case, there was every likelihood that Namibia would soon become independent and would take over responsibility from the Council.

31. Mr. BARNETT (Jamaica) supported the reference to Namibia in article 20, subparagraph (b), which was consistent with practice in many international conventions in recent years. He had doubts, however, about the reference to regional economic integration organizations in subparagraph (c). He failed to see how such organizations, which were concerned mainly with technical matters, could discharge obligations under the convention, which concerned the rights and freedoms of individuals. He was concerned, too, about an apparent anomaly. Subparagraph (c) provided that such organizations could sign the convention if they had competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the convention, whereas under article 21, paragraph 2, it was only when presenting their instruments of ratification that they were required to declare the extent of their competence with respect to the matters governed by the convention.

32. Mr. RAMESH (India) shared the views of the representative of Mauritania and supported the reference to Namibia in subparagraph (b).

33. Mr. de TORRES (Spain) supported articles 20 to 28 as presented in document E/CONF.82/C.2/L.43.

34. He was in agreement with the references to Namibia, and felt it would be unwise at the present juncture to allow the question to become a political issue which would hamper progress. He also agreed with the references to regional economic integration organizations and supported the views of the United Kingdom representative. Those organizations had full competence in respect of some of the articles in the convention and would contribute to its efficient implementation. Conversely, their exclusion would leave gaps and thus impair implementation.

35. Mr. SCOTT (Legal Consultant to the Executive Secretary), replying to the USSR representative, said that the Economic and Social Council had directed the Secretary-General to invite to the present Conference—as full participants—all States as well as Namibia as represented by the United Nations Council for Namibia. It was an invariable rule in United Nations conventions to include all entities and States that had been invited to a conference in the clause relating to those entities which could become Parties. Unfortunately he had not immediately available all the recent United Nations conventions which contained the formula "Namibia, represented by the United Nations Council for Namibia", but it had certainly been used in the 1983 United Nations Convention on the Law of the Sea, and in the 1986 Vienna Convention on Treaties between States and Intergovernmental Organizations and between Intergovernmental Organizations.

36. Mr. BABAYAN (Union of Soviet Socialist Republics) thanked the Legal Consultant for confirming the existence of legal precedents.

37. Mr. OPARA (Nigeria) supported article 20 subject to a reservation with respect to subparagraph (c).

38. Mr. FAKHR (Islamic Republic of Iran) supported subparagraph (b) but suggested the deletion of subparagraph (c).

39. Article 20 was approved.

40. Mr. SINGER (German Democratic Republic) suggested that a substantive debate on all or part of the Final Clauses should be avoided and proposed that the Committee should approve articles 20 to 28 as they stood. Delegations wishing to do so could enter reservations in respect of specific points.

41. After a procedural discussion in which Mr. HARRISON (Australia), Mr. WOTA (Austria), Mr. HENGSTENBERG (Federal Republic of Germany), Mr. GUNY (Turkey), Mr. BERG (Norway), Mr. de la BARRE (Belgium), Mr. EDWARDS (United Kingdom), Mr. LAVI (Philippines), Mr. AGUILAR (Bolivia), Mr. de la GUARDIA (Argentina), Mr. MOAYEDDODIN (Islamic Republic of Iran), Mr. STEWART (United States of America), Mr. BARNETT (Jamaica), Mr. MOHIB ASAD (Pakistan), Mr. SABOLA (Brazil) and Mr. NICK (Yugoslavia) took part, the CHAIRMAN suggested that it might be expedient to consider articles 21-24 together, followed by articles 27 and 28 and then articles 25 and 26.

42. It was so decided.

43. Mr. STEWART (United States of America) said that his delegation’s reservation to article 20 also applied to articles 21, 22 and 23.

44. Mr. WIENIAWSKI (Poland), referring to article 23, was of the view that the minimum number of ratifications required to bring the convention into force should be 30.

45. Mr. BARNETT (Jamaica), Mr. AGUILAR (Bolivia) and Mr. WETUNGU (Kenya) associated themselves with the view expressed by the Polish representative.

46. Mr. POPOV (Bulgaria), Mr. LAVI (Philippines), Mr. HARRISON (Australia), Mr. SIBLESZ (Netherlands), Mr. de la GUARDIA (Argentina) and Mr. FERRARIN (Italy) felt that, in view of the urgency of the issues raised by the convention, as well as its importance, no more than 20 ratifications should be required for it to enter into force.

47. Mr. OPARA (Nigeria) said that his delegation agreed with the six previous speakers and wished to place
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on record its reservation with regard to article 23, paragraph 3.

48. Mr. BARNETT (Jamaica) said that perhaps a consensus was unnecessary, provided that the records indicated that delegations held divergent views.

49. Mr. NICK (Yugoslavia) said that the importance of the issues raised by the convention should not be used to justify undue haste in bringing it into force.

50. Mr. STEWART (United States of America) agreed.

51. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to approve articles 21 to 24, without taking a decision on the question of the number of ratifications.

52. Articles 21 to 24 were approved.

The meeting rose at 6.15 p.m.

31st meeting
Thursday, 15 December 1988, at 7.10 p.m.

Chairman: Mr. van GORKOM (Netherlands)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Report of the Working Group on Final Clauses (concluded)

Articles 27-28 (concluded)

1. The CHAIRMAN invited the Committee to examine articles 27 and 28 first.

2. Articles 27 and 28 were approved.

Article 25 (concluded)

3. Mr. SABOIA (Brazil) said that, in his delegation's view, the wording of article 25 was rather unclear and should follow that of other United Nations instruments more closely. On the basis of consultations with the Legal Consultant and various delegations, therefore, he proposed that the words "after a further period of one year" at the end of paragraph 1 should be replaced by the words "in respect of each Party 90 days after that Party has deposited an instrument containing its consent to be bound by that amendment", and that the following sentences should be added to the end of paragraph 2: "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."

4. Mr. de la GUARDIA (Argentina), Mrs. GOLAN (Israel), Mr. MOAYEDODDIN (Islamic Republic of Iran), Mr. RAMONDI (Italy), Mr. NAVARRO (Chile), Mr. AGUILAR (Bolivia) and Mr. HOURORO (Morocco) supported those proposals.

5. Mr. NODA (Japan) also supported the Brazilian representative's proposals, but wondered whether the Legal Consultant could confirm whether they were actually necessary.

6. The CHAIRMAN said that the views of the Legal Consultant had already been sought and that he had said that no legal problems were raised by the Brazilian representative's proposals.

7. Mr. TEWARI (India) also supported the Brazilian representative's proposals but suggested replacing the words "shall be deemed to be accepted", by "shall be deemed to have been accepted", and the words "90 days after that Party has deposited . . ." by "90 days after the Party which had initially proposed the amendment . . .".

8. Mr. EDWARDS (United Kingdom) said that his delegation would have preferred the text of article 25 as it appeared in document E/CONF.82/C.2/L.43 but, in a spirit of compromise, was prepared to accept the Brazilian delegation's proposals.

9. He suggested that in paragraph 1 the words "in respect of each Party" should be replaced by "in respect of a Party" and the words "an instrument containing its consent" by "an instrument expressing its consent".

10. The CHAIRMAN said that those points would be drawn to the attention of the Drafting Committee.

11. Mr. DZIOUBENKO (Union of Soviet Socialist Republics) asked the Brazilian representative whether wording could be found covering both the tacit agreement procedure and the express agreement procedure. He also wondered why, in the second paragraph, it was necessary to specify the document to be adopted.

12. Mr. STEWART (United States of America) supported the Brazilian representative's proposals as amended by the United Kingdom representative.
13. Mr. GUNER (Turkey) said that he would have preferred the text in document E/CONF.82/C.2/L.43, but was prepared to accept the Brazilian representative's proposals which improved the wording.

14. Mr. BARNETT (Jamaica) supported the Brazilian representative's proposals but asked their author to explain why he had not suggested the usual procedure for the entry into force of a protocol of amendment based on a number of ratifications.

15. Mr. SABOIA (Brazil), replying to the question raised by the USSR representative, explained that if the ratification process was not required by the constitutional system of a Party in respect of amendments, the proposed language would not prevent it from expressing its consent to be bound in a different way.

16. In reply to the Jamaican representative, he explained that his original idea had been to specify certain requirements for entry into force, but in the course of consultations with the Legal Consultant and delegations he had been informed that that would make the process more complex and that the matter should be left to the Conference itself.

17. Mr. DZIOUBENKO (Union of Soviet Socialist Republics) expressed satisfaction with the explanation which would be of importance for the interpretation of the article later on.

18. Article 25, as amended, was approved.

Article 26 (concluded)

19. The CHAIRMAN said that the text of article 26 presented in document E/CONF.82/C.2/L.43 combined various elements from the two variants originally set out in document E/CONF.82/C.2/L.16, and was therefore a compromise.

20. Mr. SIBLESZ (Netherlands) said that it had been his Government's consistent policy that disputes concerning the interpretation and application of a treaty or convention ought not to be allowed to continue merely because one of the Parties was unwilling to agree to any of the methods available for settlement. His delegation therefore greatly preferred variant A in the basic document (E/CONF.82/3), and only with great reluctance had it joined the consensus in the Working Group.

21. Mr. LAVIÑA (Philippines) said that he had also preferred variant A and endorsed the Netherlands representative's comments. His delegation had difficulties with paragraphs 4 and 5 of the article, which would not contribute to the solution of outstanding disputes between Parties, but in the interest of consensus and because of time constraints he would not object to the consensus.

22. Mr. EDWARDS (United Kingdom) associated himself with the views expressed by the previous speaker.

23. Mr. de la GUARDIA (Argentina) said that his delegation would have preferred variant B but was prepared to agree to the Working Group's text.

24. Mr. BULLON (Spain) said that his delegation too would have preferred variant B as being more elegant and logical, and also because it referred to arbitration, a method regularly used by Spain in international relations. The compromise text was not satisfactory, but his delegation would not go against the consensus.

25. Mr. AGUILAR (Bolivia) said that he would also have preferred variant B but believed that the Working Group's compromise solution would enable consensus to be achieved.

26. Mr. POPOV (Bulgaria) pointed out that arbitration was out of place in a list of measures that included inquiry, mediation and conciliation. He did not oppose the consensus but had reservations concerning the text.

27. Miss AVELINE (France) said that her delegation had also been in favour of variant B for the reasons given by the Spanish representative, but would not oppose the consensus.

28. Mr. GUNER (Turkey) considered that the present text of article 26 faithfully reflected the international community's approach to compulsory jurisdiction. He supported the compromise text, which ingeniously incorporated the various proposals, including his own, made in the Working Group.

29. Mr. SPROULE (Canada) said that his delegation's position was similar to that of the United Kingdom and the Netherlands.

30. The CHAIRMAN said that he took it that the Committee was prepared to approve article 26 by consensus.

31. It was so decided.

Reservations

32. The CHAIRMAN recalled that the Draft Final Clauses prepared by the Secretariat (E/CONF.82/C.2/L.16) and the basic document (E/CONF.82/3) contained proposals on reservations with two variants. Some delegations in the Working Group had been strongly in favour of a clause excluding the possibility of reservations; others had suggested a clause spelling out the particular articles of the convention to which reservations were or were not to be permitted. After a lengthy discussion, the Working Group had decided that it would be preferable not to have a reservations clause and to leave the matter to be dealt with in accordance with the rules of international law relative to reservations, which were absolutely clear since the adoption and entry into force of the 1969 Vienna Convention on the Law of Treaties. Under that Convention a State could enter reservations to any treaty which contained no reservations clause, with the exception of reservations that were not compatible with the objective and purpose of the treaty.
33. Mr. LAVIÑA (Philippines) considered that, ideally, the future convention should contain a clause prohibiting reservations to the convention or else enumerating the articles to which reservations were not permitted. If there were no reservations clause, it would theoretically be possible for any State Party to the convention to enter a reservation to any article in the sincere belief that it would not contravene the purpose of the convention. That would result in confusion and dispute. As the 1986 Vienna Convention on the Law of Treaties had not yet entered into force, reference would have to be made to the 1969 Vienna Convention on the Law of Treaties. That instrument did not, however, apply to international organizations, whereas it was proposed that they should be Parties to the present convention. Although he failed to see how the 1969 Vienna Convention would apply, he felt that the discussion on reservations should not be reopened and would agree to the consensus.

34. Mr. STEWART (United States of America) said that his delegation had initially been in favour of a clause forbidding reservations, but had joined the consensus. He pointed out that the Vienna Convention on the Law of Treaties contained a provision indicating that reservations contrary to the object and purpose of a convention were not permitted. That was a rather broad provision, for it would be hard to find any article in the convention to which a reservation could be entered without raising objections that it was contrary to the objective and purpose of the instrument.

35. He would not go against the consensus but expressed the hope that States considering becoming Parties to the convention would accede to the entire instrument without reservations.

36. Mr. de TORRES (Spain) endorsed those remarks. His delegation would not oppose the consensus but believed that if reservations were entered by a large number of countries to articles on which it had been difficult to reach agreement, such as articles 1-5 and article 8, the convention would be unable to fulfill its purpose.

37. His delegation would have preferred a reservations clause explicitly listing the articles to which reservations could not be entered and possibly others to which they could. Since as many States as possible should become Parties to the convention, it would be unfortunate if a country had difficulty in acceding because of an objection to an article that was not of fundamental importance.

38. Mr. MOAYEDODDIN (Islamic Republic of Iran) said that his delegation, which had been assured that its objection to the extradition of nationals could not be construed as a reservation contrary to the objectives or purposes of the convention, was prepared to join the consensus.

39. Mr. de la GUARDIA (Argentina) said that his delegation would also have preferred a reservations clause, and endorsed the views expressed by the United States and Spanish representatives.

40. Since the convention was concluded by States and not international organizations, it was in fact governed by the 1969 Convention on the Law of Treaties.

41. Mr. NODA (Japan) said that he would also have preferred a reservations clause on the lines of paragraphs 2 and 3 of the reservations article in document E/CONF.82/C.2/L.16. His delegation had in fact submitted a proposal to that effect in E/CONF.82/C.2/L.34, but in the interest of consensus had not opposed the compromise reached in the Working Group.

42. Ms. HUSSEIN (Malaysia) agreed with the Philippine representative that the Convention on the Law of Treaties made the status and effect of reservations somewhat unclear in the absence of a specific reservations clause. The question might arise whether a reservation would require acceptance by all Parties or would have effect only as between consenting Parties.

43. While accepting the consensus, her delegation would have preferred a clause excluding reservations altogether.

44. Mr. BARNETT (Jamaica) said that his Government continued to abide by the Convention on the Law of Treaties and considered that no one State could determine whether or not a given reservation was incompatible with the objectives or purpose of the convention.

45. Mr. TEWARI (India) said that, in the absence of a reservations clause, his country would have practical difficulties in acceding to the new convention, since it had entered a reservation to article 36 of the Single Convention of 1961 in respect of extradition and to the 1961 and 1971 Conventions in respect of referring disputes to the International Court of Justice.

46. Mr. ASBALI (Libyan Arab Jamahiriya) said it would be well to insert a paragraph in the new convention indicating that the absence of a reservations clause did not mean that a State did not have the right to enter reservations.

47. Mr. WOTAVA (Austria) said that even total exclusion of the possibility of making reservations would be of little avail if the Governments represented at the Conference failed to demonstrate political will. He was certain, however, that they were firmly determined to ensure that the convention became a powerful instrument against illicit trafficking.

48. Mr. HOURORO (Morocco) said that his delegation was concerned by the absence of a reservations clause but would not dissociate itself from the consensus achieved.

49. Mr. GUNEY (Turkey) said that, although his delegation would have preferred an article expressly prohibiting reservations, it had joined the consensus, thus leaving the question of reservations to be covered by the Law of Treaties.

50. The CHAIRMAN said that if he heard no objection he would assume that the Committee wished to approve
the proposal of the Working Group that there should be no article on reservations.

51. It was so decided.

Articles 15-19

52. Mr. WOTAVA (Austria), explaining his Government's general position on articles 15 to 19, said that the functions of the Commission and the Board as established by the Single Convention of 1961, as amended by the 1972 Protocol and by the Convention on Psychotropic Substances, had to be respected.

53. The new convention contained a number of articles—the most important being article 8—which should clearly be implemented by the Board, while others would be the responsibility of the Commission, especially in view of the new approach adopted to the problem of illicit traffic.

54. States would not know for some time how the convention would function in practice, and changes might well have to be made in the light of experience. The most important point was to associate the Commission more closely with its implementation, and in his view the political will of member States required to make the convention a success could best be mobilized within that body.

55. Mr. SIBLESZ (Netherlands) explained that, in his delegation's amendments (E/CONF.82/C.2/L.42), article 16 corresponded to article 15 in the basic document, article 17 to article 18 and article 18 to article 17.

56. Those amendments were based on the assumption that the convention's implementation machinery ought to be adapted to the subjects it covered, and that, in view of its subject-matter, the relevant precedents were not the 1961 and 1971 Conventions but rather more recent conventions on the combating of terrorism and hijacking, the protection of diplomats and other instruments which dealt with co-operation between Parties in international criminal law. They were further based on the assumption that, notwithstanding differences between the draft convention and the 1961 and 1971 Conventions, it would be wise to ensure as much continuity as possible in respect of implementation machinery. His delegation therefore preferred to maintain the functions of both the Commission and the Board with respect to the various provisions of the new convention unless such functions were incompatible with its provisions.

57. His delegation considered that article 8 constituted an area of concern and supervision by the Board and that, in addition, the Commission should, on the basis of reports submitted by the Parties, exercise overall supervisory functions in relation to the convention as a whole. As to the precise scope of the Board's competence, he said that articles 8, 9, 10, 11, 12, 13 and 14 had been listed in article 17 of his delegation's proposal in an attempt to accommodate delegations that wished to broaden the Board's powers.

58. In other words, the system proposed in E/CONF.82/C.2/L.42 reflected the need for continuity in respect of the 1961 and 1971 Conventions and at the same time provided a generally-acceptable implementation regime similar to that of conventions in other areas.

59. Mr. SZEKELY (Mexico), referring to the Mexican proposal to delete articles 17 and 18 (E/CONF.82/3, p. 114), said that his delegation considered that article 17 duplicated other provisions in the convention and could be interpreted in a manner that would run counter to the principles already accepted by consensus. Article 18, in its view, was liable to sow the seeds of potential conflict between States and was unnecessary. Its provisions went too far in authorizing the Board to demand explanations, to impose sanctions and publish reports. That would destroy the spirit of the new convention, politicize the instrument and merely provide a forum for dispute.

60. Although the Netherlands amendment was intended to correct the shortcomings of the article, his delegation believed that the functions of the Board should be limited to those set out in article 8.

61. Mr. SABOIA (Brazil) considered that implementation clauses should authorize the States Parties themselves to evaluate the conduct of other Parties and not entrust that task to a body concerning whose membership they had no say.

62. His delegation had been relatively satisfied with the provisions of articles 15 to 19 of the basic document, although it considered that the functions listed in article 18, if adopted, should be assigned to the Commission. The Netherlands proposals for a new article 17 (formerly article 18) and those in E/CONF.82/C.2/L.40/Rev.1 caused difficulties for his delegation.

63. He had been impressed by the arguments presented by the Mexican representative and felt that deletion of article 18 would do away with an element that could create problems for States Parties.

The meeting rose at 9.30 p.m.
CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)

Articles 15-19 (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the implementation articles.

2. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested that the Committee might usefully base its discussions on the Netherlands proposals (E/CONF.82/C.2/L.42) which had been introduced at the previous meeting and which were comprehensive and inspired by a desire for a compromise solution.

3. Mrs. ROUCHEREAU (France) pointed out that article 17 (Co-ordination Agency), which was designed to ensure the necessary follow-up and co-ordination of the convention at the national level, was in the wrong place and should be placed before article 15.

4. Mr. TANAKA (Japan) endorsed the view expressed by the French representative.

5. Mr. SAINT-DENIS (Canada) said that a number of delegations believed that the International Narcotics Control Board should have full responsibility for implementing the convention. The Board was successor to drug control bodies, the first of which had been established more than 50 years previously. A series of treaties had conferred specific responsibilities on the Board in connection with restricting the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, ensuring their availability for such purposes, and endeavouring to prevent the illicit cultivation, production and manufacture of and illicit trafficking in and use of drugs. In carrying out its responsibilities the Board had maintained a continuing dialogue with the Parties and Governments with a view to promoting the aims of the treaties through periodic consultations.

6. Thus the Board was responsible for the general application of the existing Conventions, but it was not involved in operational matters between Parties on a case-by-case basis. In addition to administering the estimate system to achieve a balance between world drug production and consumption, the Board had the very important function under the existing Conventions of supervising the implementation of provisions similar to some of those contemplated in the new instrument. It monitored the extradition, seizure and confiscation provisions set out in articles 35, 36 and 37 of the 1961 Single Convention. It was important to note that, under the existing Conventions, discussions between the Board and Parties were strictly confidential. The Board had often prevented or corrected problems on an informal basis and had avoided the political confrontation that might have resulted in the Commission. If, however, the Board was unable to resolve problems through negotiations with Parties, it brought the issues in question to the attention of the Commission and to the Economic and Social Council, thus greatly facilitating their decisions. Experience had shown that the Board could correct erroneous perceptions concerning compliance by Parties with the existing Conventions.

7. He drew attention to the fact that Canada, Denmark, France, the Federal Republic of Germany, Norway and Sweden had submitted a number of amendments to the implementation articles in the basic text (E/CONF.82/3) in documents E/CONF.82/C.2/L.38/Rev.1, L.39/Rev.1, L.40/Rev.1 and L.41/Rev.1. In the view of the sponsors, the text of article 18 in document E/CONF.82/3 was insufficient and made no provision for the confidentiality of the information provided to the Board. The co-sponsors therefore proposed to add, at the end of paragraph 1(a), the wording of paragraph 1(a) of article 19(a) of the 1971 Convention on Psychotropic Substances. They also proposed the insertion of the words "have the right to" between "shall" and "publish" in paragraph 2 of the current text in order to give the Board sufficient authority to act when the aims of the convention were jeopardized while retaining confidentiality, as appropriate, in discussions with Parties.

8. The Board would require additional expertise if it were to discharge effectively its responsibilities under the new convention, particularly in the fields of criminal law and law enforcement. The sponsors therefore proposed the inclusion of an additional paragraph in article 18 requiring the Board to avail itself of the services of appropriate experts.

9. The sponsors had proposed amendments to article 16 on the subject of reports to be furnished to the Board, in language virtually identical to that of article 18, paragraph 1 of the 1961 Single Convention.

10. They had also proposed a new article 18 bis requiring the Board to prepare an annual report based on information collected under article 16. The wording was drawn from article 18 of the 1971 Convention on Psychotropic Substances.

11. The aim of the sponsors was to ensure that the system for supervising implementation of the provisions of the new convention paralleled as closely as possible the existing system under the 1961 Single Convention and the
1971 Convention on Psychotropic Substances. They were not proposing that the Board should be granted additional functions or powers. Over the years the Board had developed a sound method of dealing with issues and it was viewed with respect and trust by Parties to the existing Conventions. Since the new convention differed from the existing Conventions, certain adjustments would be required to enable the Board to perform its functions. Under the previous system the Board had had to submit its reports to the Commission, and it was proposed that that practice should continue so that issues that were not resolved by the Board could be discussed by the Commission.

12. In the opinion of the sponsors, therefore, the Board should be designated as the body responsible for supervising the implementation of the provisions of the new convention since the sharing of that responsibility between the Board and another body such as the Commission would, because of the close inter-linking of most of the articles of the convention, result in confusion and administrative conflict between the supervising bodies and poor or no supervision of the new convention.

13. After a procedural discussion in which Mr. FERRARINI (Italy), Mr. MEYER (German Democratic Republic), Mr. WOTAVA (Austria), Mr. SABOIA (Brazil), Mr. TRINCELLITO (United States of America), Mr. de TORRES (Spain), Mr. PAYE (Senegal), Mr. MGBKOWERE (Nigeria), Mr. KUNZ (Switzerland), Mr. GASPAR HENRIQUES (Portugal), Mr. WIENIAWSKI (Poland), Mr. ASSADI (Islamic Republic of Iran), Mr. WETUNGU (Kenya), Mr. AL-OZAIR (Yemen), Mr. AL-NASR (Saudi Arabia), Mr. POPOV (Bulgaria), Mr. SAINT-DENIS (Canada), Mr. EDWARDS (United Kingdom), Miss AVELINE (France), Mrs. LACANLAE (Philippines), Mr. AL-SHARRADA (Jordan), Mr. HULTSTRAND (Sweden), Mr. KABBAJ (Morocco), Mr. SZEKELY (Mexico), Mr. van GORKOM (Netherlands), Mr. PALARINO (Argentina), Mr. TORDAL (Norway), Mr. MOTSIK (Ukrainian Soviet Socialist Republic), Mr. LOW MURTRA (Colombia), Mr. WILSON (Australia), Mr. OPARA (Nigeria), Mr. AGUILAR (Bolivia), Mr. TANAKA (Japan) and Mr. ASAD (Pakistan) took part, the CHAIRMAN observed that there was a clear majority in favour of using the Netherlands proposals in document E/CONF.82/C.2/L.42 as a basis for the Committee's discussion of the implementation articles.

14. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested that the Committee should first settle the question of the competence of the Commission and the Board, and then decide how to improve upon the Netherlands proposals. It would be wrong to approach the problem by trying to determine the relative importance of the two bodies, for each had its own functions.

15. The Board, whose work he greatly valued, had a limited membership of highly qualified experts, whereas the members of the Commission were government representatives with a broad spectrum of expertise. It had been acknowledged that, on the basis of its present composition, the Board was not competent to deal with every matter under the convention, whereas the Commission was. Under the joint proposals introduced by the Canadian representative all functions under the convention would be assigned to the Board, although they also recognized that the Board's membership had to be increased.

16. As to the issue of confidentiality, the machinery required to enable the Commission to meet in private session already existed, but a provision could be included in the new convention to that effect.

17. He considered that the Netherlands proposals were sound although the wording on confidentiality and the submission of reports would have to be amended.

18. Mr. TRINCELLITO (United States of America) proposed that the Committee should discuss article 17, "Functions of the Board", in the Netherlands proposals (E/CONF.82/C.2/L.42), which did not differ greatly from the original article 18 in document E/CONF.82/3.

19. It was so decided.

Article 17 (formerly article 18) (continued)

Paragraph 1(a)

20. Mr. SABOIA (Brazil) said his delegation believed that the States Parties themselves should be the members of any body responsible for supervising the implementation by States of the provisions of conventions. Relevant examples included the International Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination.

21. As it was too late to propose that the convention should contain a provision on the establishment of a body consisting of experts appointed by the States Parties, as in the case of those two Conventions, he was therefore prepared to agree that many of the implementation functions could be assigned to the Commission which, while not necessarily composed of States Parties, had a broad membership and would reflect the various views and systems of States Parties.

22. He had great difficulty in accepting the idea that the Board should be given the broad powers specified in the Netherlands proposals, which included the possibility of addressing itself directly to the Parties, asking for explanations and making direct recommendations. Drawing a parallel with provisions on the implementation of human rights conventions, he said that alleged violations of human rights were processed in the United Nations system by an expert body (the Sub-Commission on Prevention of Discrimination and Protection of Minorities) which, when appropriate, submitted complaints to the Commission on Human Rights whose members were elected by the Economic and Social Council. If the system outlined in the Netherlands proposals was adopted his delegation would envisage a role for the Board similar to that of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Under that system, the Board could transmit a confidential report to the Commission suggesting that the State Party concerned should be asked to provide further information.
23. His delegation would also be willing to consider transferring the functions listed in the other subparagraphs of the article to the Commission. The power of initiating the process was entirely consonant with the technical nature of the Board, but further steps should be the responsibility of the Commission.

24. Mr. MAROTTA (Italy) considered that the references in subparagraphs (a) and (b) of the Netherlands proposals to article 12, a technical article dealing with the jurisdiction of each Party, should be deleted.

25. Mr. LOW MURTRA (Colombia) thought it would be difficult to achieve a consensus on the proposed article. The question of the functions of the Board and the Commission were so complex that, in view of the lack of time, he proposed its deletion.

26. Mr. BABAYAN (Union of Soviet Socialist Republics) endorsed the view expressed by the Italian representative. He believed that the reference to article 11 should also be deleted and had doubts about the need to refer to articles 13 and 14.

27. He was in favour of including a reference to the submission of reports, if necessary in a confidential manner, to the Commission. The wording should be changed to make it clear that such reports were to be submitted through the proper channel and that, if the Commission agreed with the comments they contained, transmitted to the Economic and Social Council.

28. Mr. SAINT-DENIS (Canada), referring to paragraph 1(a) of the Netherlands proposals, expressed the view that all the articles of the convention should be monitored by the Board and therefore proposed the deletion of the words "of articles 8, 9, 10, 11, 11 bis, 12, 13 and 14", so that the text would read "... a Party to comply with the provisions of this Convention".

29. Miss AVELINE (France) said that, although her delegation would have preferred the joint proposals introduced by the Canadian representative, the Netherlands proposals provided a sound basis for discussion. However, there could be no question of entrusting the Commission or the Board with the task of settling disputes arising between two Parties concerning extradition, confiscation, or any other matter dealt with in article 25. Various articles of the convention provided that States Parties should adopt the necessary legislation to ensure that the convention was implemented; that was a matter which should be entrusted to the Board under article 17 (formerly article 18), and she suggested that the Netherlands proposals should be amended on those lines.

30. Mr. SZEKELY (Mexico) recalled that his delegation had proposed the deletion of the article because of its divisive nature. In his view the choice between the Board or the Commission was of secondary importance: neither should be assigned the functions in question. The punitive nature of the article, which was inconsistent with the co-operative spirit of the convention, would lead to the politicization of whatever body was chosen and make it vulnerable. It would also create the danger of unfounded accusations being directed by one country against another.

31. Mr. ZURITA (Venezuela) agreed with the USSR representative that reference should be made only to articles 8, 9 and 10 in the article under consideration. If the Board asked a State Party why it was not complying with those articles, that Party might well question the Board's reasons for suggesting that they had not been complied with; his delegation was arriving at the same conclusion that had been reached by the Mexican delegation, but by a different path.

32. Mr. LOW MURTRA (Colombia) endorsed those views. Moreover, paragraph 1(a) mentioned failure to comply with only certain articles; it did not mention others, such as articles 2, 3, 5, 6 and 7. Admittedly it might be argued that the Board must not interfere in matters of extradition or confiscation, which were judicial issues; but the system seemed to lack balance. It would thus be better to delete the article.

33. Mr. MEYER (Federal Republic of Germany) pointed out that both the existing Conventions contained provisions authorizing the Board to supervise action against illicit traffic. All three conventions should function as one, and have the same supervisory body and the same procedure. He therefore agreed that the articles referred to in paragraph 1(a) should be deleted.

34. He noted that procedure similar to that outlined in subparagraph 1(d) was provided for in the existing Conventions and had worked very well, as was apparent from the Board's reports which dealt mainly with problems of illicit traffic. Bilateral agreements might create problems, however, and he therefore proposed that they should be excluded from the Board's jurisdiction under article 17.

35. Mr. ABDUL SAMIA (Libyan Arab Jamahiriya) said that his delegation believed that the functions set out in article 17 should be assigned to the Commission for allocation as it considered appropriate.

36. Mr. TRINCELLITO (United States of America) proposed that the words "If, on the basis of its examination of information submitted to it by the Parties" at the beginning of subparagraph 1(a) should be replaced by the words "If, on the basis of its examination of information submitted by the Governments to the Secretary-General or to the Board or of information communicated by United Nations organs", which were taken from the text of document E/CONF.82/3 and would expand the information available to the Board.

37. For the reasons given by the representative of the Federal Republic of Germany, he supported the Canadian representative's proposal to delete the articles referred to in subparagraph 1(a). It would be pointless to conclude a convention that contained no monitoring provisions.
38. Mr. AL-OWAIS (United Arab Emirates) considered that the supervisory functions should be entrusted to the Commission and the Board.

39. Mr. SAINT-DENIS (Canada) said it was logical that the task of monitoring provisions that were common to the convention under discussion and to the existing Conventions should be the responsibility of one and the same body.

40. With regard to bilateral relationships, he said it was not the intention of the sponsors of E/CONF.82/C.2/L.40/Rev.1 that the Board should act as machinery for the settlement of disputes, and agreed that the text should be amended to make that quite clear.

41. Mrs. FERNANDEZ OCHOA (Costa Rica) endorsed the arguments put forward by the Mexican representative at the previous meeting. The article under consideration was of a punitive nature and at variance with the spirit of co-operation that should pervade the convention. It repeated certain notions already contained in articles 15 and 16, was based on the system of accusation and would give the Board the right to call sovereign States to account and even to punish them. It was controversial and should be deleted.

42. Mr. HULTSTRAND (Sweden) endorsed the observations of the Canadian and the United States representatives.

43. Mr. AGUILAR (Bolivia) said that a decision to entrust the body responsible for monitoring implementation of the convention’s provisions with punitive powers might cast doubt on its technical capabilities and result in conflict. The Commission was a body to which States referred on the measures they were taking to combat drug trafficking and the Board was a specialized technical body. To place the entire burden of monitoring the implementation of articles 8, 9 and 10 on the Board would upset the balance of the convention.

44. Mr. PAYE (Senegal) pointed out that the draft convention was quite different from earlier instruments; its purpose was not only to regulate international trade in narcotic drugs but also to ensure better law enforcement so as to combat illicit trafficking. It contained provisions on such matters as judicial investigation and confiscation, which were of a political nature and had to be monitored by a body with political powers. He therefore suggested that the Commission should be entrusted with responsibility for the implementation of the penal provisions of the convention to ensure the continuity and development of international drug traffic control. The Board would thus be able to continue performing its traditional functions in accordance with articles 10, 11, 11 bis and 14 if necessary. It had already proved to be of great value to the international community, but it should not be overburdened.

45. Mr. VALL (Mauritania) said that, despite his sympathy for the views of the Mexican representative, he supported the Netherlands proposals, which maintained the balance between the sovereignty of States Parties to the convention and the task of the bodies established by the international community, and would ensure the implementation of the provisions of the convention as effectively as possible.

46. Miss AVELINE (France) endorsed the views expressed by the representatives of Canada, the Federal Republic of Germany and the United States. She felt that there was some misunderstanding about the role of the Commission and the Board, since there was no question of entrusting an international body with the task of settling disputes but merely of ensuring that the Parties would adopt the necessary legislative measures to implement the convention. That had always been the Board’s task and had been carried out not in a punitive manner but in cooperation with States. The Board was in fact the most suitable body to carry out such comprehensive legislative monitoring.

47. Mr. GUNEY (Turkey) endorsed those views. The aim of the new convention was to combat the common enemy of illicit drug trafficking, and monitoring of its implementation was essential. His delegation was therefore in favour of the joint proposals introduced by the Canadian representative.

48. Mr. WEI (Belgium) said that the monitoring function should be entrusted to the Commission, but the expert advice it needed should be provided by the Board.

49. Mr. U THEIN THUN (Burma) was in favour of the deletion of the article under consideration.

50. Mr. BOURESSLI (Kuwait) considered that the task of monitoring the implementation of the convention should be entrusted to the Commission and not to the Board. He was in favour of the deletion of the article under consideration.

51. Mrs. GOLAN (Israel) believed that the implementation measures should be consistent with those in the existing Conventions. In her view, the body to be entrusted with the task of implementation should be the Board, and she supported the joint proposals introduced by the Canadian representative.

52. She endorsed the USSR representative’s proposal to delete the reference to articles 12 and 13 in the Netherlands proposals.

53. Mr. BARNETT (Jamaica) said that, as an intergovernmental body, the Commission would be best able to perform the tasks set out in the Netherlands proposals; an expert group such as the Board would not enjoy the confidence of the States Parties. In his opinion, therefore, retention of the article under consideration would prejudice the chances of the convention’s ratification.

54. He emphasized that the Board should discharge its responsibilities with respect to articles 8, 9 and 10, and possibly 11 bis, and submit its report to the Commission, but it should not be entrusted with the task of evaluating a completely new convention.
55. Mr. WILSON (Australia), noting that monitoring machinery was essential if the convention was to function effectively, said that the Board had a proven track record under the existing Conventions, reasonably comprehensive geographical representation and technical expertise among its members, which included pharmacologists, public administrators and lawyers. It worked in co-operation with States, met privately and could act in a confidential manner, and therefore had the capacity for comprehensive and dispassionate action. For those reasons he supported the joint proposals introduced by the Canadian representative.

56. Mr. SMITH (Barbados) said his delegation considered that the article under discussion was not acceptable. It agreed that the supervisory functions of the Commission and the monitoring functions of the Board were probably necessary for the implementation of the convention, but believed that the article in question went beyond the function of monitoring. Subparagraph 1(b) would give the Board power "to adopt such remedial measures as would seem necessary or appropriate under the circumstances". That provision would necessarily affect the sovereignty of small States since it would allow the Board to call upon countries to introduce legislation that might be necessary for the implementation of the convention but might violate their constitutional rights.

57. His delegation could agree to entrusting the Board, or for that matter the Commission, with a supervisory function only if it was purely for the purpose of making recommendations and circulating information to all the Parties to the convention.

58. The CHAIRMAN, summing up the discussion, observed that adoption of the Canadian representative's proposal to delete the reference to the articles in subparagraph 1(a) would have the effect of vesting all responsibility for supervision in the Board. On the other hand, the proposal by the Brazilian representative and supported by others to delete the article would mean that all responsibility would fall to the Commission, or that other arrangements might have to be made. Some representatives wished to amend the reference to the articles listed in paragraph 1(a) so as to achieve a division of labour between the Board and the Commission. Eleven delegations were in favour of deleting the article altogether and giving overall responsibility to the Commission and seven in favour of entrusting overall responsibility to the Board.

59. He therefore suggested that informal consultations should be held with a view to resolving the issue.

The meeting rose at 1.20 p.m.

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33rd meeting
Friday, 16 December 1988, at 3.55 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (continued) (E/CONF.82/3 and Corr.1)


1. The CHAIRMAN said it was his understanding that the Netherlands delegation had drafted a text which might provide the basis for a compromise. He therefore suggested that the Committee should adjourn for one hour in order to enable delegations to discuss it informally.

2. Mr. POPOV (Bulgaria) said that he had no objection in principle to that suggestion, but wished to express his delegation's views on the body that should be entrusted with supervision of the implementation of the convention. Various proposals had been put forward in document E/CONF.82/3 and in other papers before the Conference, but his delegation was disposed to support the proposals presented by the Netherlands with regard to implementation.

3. Mr. de SOUZA (Australia), speaking on a point of order, said that in view of the urgency of holding informal consultations he hoped the Bulgarian representative would agree to defer his statement until after those consultations had been completed.

4. Mr. EDWARDS (United Kingdom), Mr. GUNBY (Turkey) and Mr. PALARINO (Argentina) associated themselves with the previous member's appeal.

5. The CHAIRMAN said that he would suspend the meeting on the understanding that the Bulgarian representative would resume his statement after the Committee reconvened.

The meeting was suspended at 4.20 p.m. and resumed at 5.30 p.m.

6. The CHAIRMAN informed the Committee that the informal consultations were still proceeding and that it was hoped to produce a consensus text in time for the night meeting.

The meeting rose at 5.55 p.m.
34th meeting
Friday, 16 December 1988, at 7.50 p.m.

Chairman: Mr. BAYER (Hungary)

CONSIDERATION OF A DRAFT CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (agenda item 4) (concluded) (E/CONF.82/3 and Corr.1)

Article 17 (formerly article 18) (concluded)
E/CONF.82/C.2/L.40/Rev.1, L.42

1. Mr. van GORKOM (Netherlands) explained that his delegation, as the sponsor of document E/CONF.82/C.2/L.42, had held consultations with the sponsors of document E/CONF.82/C.2/L.40/Rev.1, as well as with other delegations which had urged the deletion of the former draft delegation, as the sponsor of document E/CONF.82/C.2/L.42, had held consultations with the sponsors of document E/CONF.82/C.2/L.40/Rev.1, as well as with other delegations which had urged the deletion of the former article 18, and that, with the assistance of the USSR delegation, a compromise solution acceptable to all three groups represented in the negotiations had finally been achieved.

2. He introduced and commented on the text of the new draft article 17, entitled "Functions of the Board", and noted that subparagraph (a), which reflected a compromise formula, was of special importance. The wording of paragraphs 2, 3 and 4 was based on the language of the Netherlands amendment, whereas that of paragraphs 5, 6 and 7 had been suggested by the delegations of Canada and Sweden.

3. He expressed the hope that the new article would be approved by consensus and that consensus could also be achieved on the text of articles 15 and 16, which had been reformulated in the Netherlands amendment (E/CONF.82/C.2/L.42).

4. Mr. BOBIASZ (Canada), speaking on behalf of the sponsors of E/CONF.82/C.2/L.40/Rev.1, said that they were prepared, albeit reluctantly, to accept the new compromise text of article 17 which represented a "package deal".

5. Mr. OUCHARIF (Morocco), supported by Miss AVELINE (France), pointed out that the text of the new draft article 17 was not yet available in all working languages.

6. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested that the Committee could proceed without delay if delegations were prepared to consider the text on the basis of the interpretation.

7. It was so agreed.

8. The SECRETARY read out the text of the new draft article 17.

9. Mr. van GORKOM (Netherlands), replying to various questions raised by Mr. BARNETT (Jamaica), said, with reference to paragraph 1(a), that the Board's competence concerned its competence under the convention and other existing conventions, as well as the new powers conferred upon it by article 8. "Information communicated by United Nations organs" would be transmitted to the Board.

10. He explained that the text of paragraph 1(b)(i) was in conformity with the relevant provisions of existing conventions and in particular the 1961 Single Convention and that the words "whole number" in paragraph 4 meant a two-thirds majority of the full membership of the Board.

11. Referring to paragraph 6, he explained that it would not be the Board's responsibility to supervise any agreements entered into by the Parties with a view to furthering the purposes of the convention.

12. Mr. POPOV (Bulgaria) supported the wording of the new article 17.

13. Miss AVELINE (France) said that although her delegation had reservations regarding the text of the new article 17, it would not oppose its adoption by consensus.

14. The CHAIRMAN invited the delegation of France, as well as any other delegations, to submit their reservations in writing. He asked the Committee if it was prepared to adopt the new draft article 17 by consensus.

15. It was so decided.

16. Mr. EDWARDS (United Kingdom) said that, while his delegation was prepared to see the compromise text of article 17 adopted by consensus, it wished to enter reservations in respect of subparagraph 1(a) which gave the Board scope for action in relation to the wider aims of the convention only in matters relating to its competence. The Board's competence was not defined in the new article, but it must certainly extend to articles 8, 9 and 11 bis because they were specified in paragraph 1(b). There was an implication that the Board might have wider competence. It already enjoyed wide-ranging competence in matters relating to illicit trafficking under the 1961 and 1971 Conventions and that competence was specifically preserved by the introductory wording of the new article 17. The situation was not clear and his delegation feared that the lack of clarity would provide substantial scope for Parties to argue that a particular matter on which the Board had asked for relevant information was not within its competence and, therefore, that the information need not be provided. Such a situation might militate against a strong and effective convention.

17. Mr. TEWARI (India) said that the specific reference to the 1961 Convention would create certain legal and
technical difficulties for India. The Board’s functions under article 17 were without prejudice to the functions assigned to it under the 1961 Convention and to its competence under that Convention. The Indian Government had entered a reservation in respect of article 6 of the 1972 Protocol which had amended article 14 of the 1961 Convention conferring on the Board, inter alia, certain excessive powers whose effect was to encroach upon the sovereignty and internal affairs of the States Parties. The reference to the 1961 Convention in the new article 17 compelled his delegation to reserve its position with regard to that article.

Article 16 (E/CONF.82/C.2/L.42) (concluded)

18. Mr. BABAYAN (Union of Soviet Socialist Republics) said that he agreed with the Netherlands amendment (E/CONF.82/C.2/L.42), but suggested that it could be preceded by the following introductory wording: “The Commission is authorized to consider all matters pertaining to the aims of this Convention and in particular:”, which was taken from article 8 of the 1961 Single Convention relating to the functions of the Commission.

19. He also suggested the addition of a new paragraph 7 reading as follows:

“On the basis of a request made by a Party or by a decision of the Board, the Commission may decide to hold a closed meeting when dealing with matters pertaining to the implementation of the covenant.”

Some of the reports of the Board were confidential, and the Commission should be in a position to deal with them on a confidential basis if so decided.

20. Mr. TEWARI (India) said that he supported the new text of article 16, but noted that the reference in paragraph 4 to article 17.1(d) should now be to article 17.1(b)(ii).

21. Mr. TRINCELLITO (United States of America) supported the introductory wording proposed by the USSR representative and noted that it might make paragraph 1 unnecessary. In paragraph 4, it might be better simply to refer to article 17. With regard to paragraph 5 it was his understanding that the schedules were to be set out in an annex; in any event, paragraph 5 was not very clear and might conflict with article 8.

22. Mr. SIBLESZ (Netherlands) said that the introductory wording proposed by the USSR representative was acceptable. He felt that the Drafting Committee could be asked to make the appropriate reference to the pertinent paragraph of article 17 in paragraph 4, and suggested the deletion of the second sentence in paragraph 5 so as to avoid any confusion. The questions raised by the new paragraph 7 proposed by the USSR representative should, in his view, be left to the Board and the Commission. He agreed with the introductory wording proposed by the USSR representative but considered that it might be appropriate to retain paragraph 1, since it contained a reference to reports submitted to the Commission.

23. Mr. ALMOSLECHNER (Austria) supported the new paragraph 7 proposed by the USSR representative.

24. Mr. SAINT-DENIS (Canada) also supported the proposed introductory wording but considered that paragraph 1 should be retained. He was in favour of the deletion of the second sentence of paragraph 5, but was of the view that the proposed new paragraph 7 might restrict the work of the Commission and create complications.

25. Mr. LAVIÑA (Philippines) also supported the proposed introductory wording. However, as views on the inclusion of the proposed new paragraph 7 were divided, it might be better to leave the question of confidentiality to the Commission.

26. The CHAIRMAN said that there seemed to be a consensus in favour of the introductory wording proposed by the USSR representative. The Drafting Committee could be asked to make any consequential changes required in paragraph 1. There also seemed to be a consensus that the second sentence in paragraph 5 could be deleted. He asked the Committee whether it was prepared to approve article 16, as amended, by consensus.

27. Mr. SZEKELY (Mexico) suggested that the reference in paragraph 4 should be to article 17.1(b).

28. The CHAIRMAN asked whether the Committee could agree that paragraph 4 of article 16 should refer to article 17.1(b).

29. Mr. TRINCELLITO (United States of America) said that his delegation believed that the reference should be to article 17.1, but would not stand in the way of a consensus.

30. Article 16, as reformulated in document E/CONF.82/C.2/L.42, as amended, was approved.

Article 15 (E/CONF.82/C.2/L.42) (concluded)

31. Mr. SIBLESZ (Netherlands) introducing his delegation’s reformulation of article 15, said that paragraph 3 was based on the wording of article 8, paragraph 11. However, as the compromise text of article 17 just approved made no mention of information to be submitted by Parties to the Board, it might be sufficient to retain the relevant text in article 8, paragraph 11 and to delete paragraph 3 of the proposal before the Committee, which might entail some adjustment of the heading.

32. Mr. BABAYAN (Union of Soviet Socialist Republics) endorsed the Netherlands proposal.

33. Article 15, as reformulated in document E/CONF.82/C.2/L.42, as amended, was approved.

34. The CHAIRMAN said that the only text before the Committee was the one in document E/CONF.82/3, to which several amendments had been submitted.

35. Miss AVELINE (France) said that provisions concerning a co-ordinating agency seemed out of place in the draft text and accordingly proposed that the article should be inserted either before the preceding or after the following article.

36. Mr. SINGER (German Democratic Republic) agreed.

37. Mr. MAROTTA (Italy) recalled that, during the Committee's earlier discussion of article 7, an amendment submitted by the French delegation had been withdrawn after the Italian delegation had proposed that a reference to article 7 should be included in the article on the co-ordination agency. The end of the text under consideration should therefore read "effective co-operation under articles 6 and 7".

38. Mr. SZEKELY (Mexico), referring to paragraph 117 of document E/CONF.82/3, reminded the Committee that his delegation had proposed the deletion of the article under consideration, the substance of which seemed to be fully covered by article 6.

39. Mr. BABAYAN (Union of Soviet Socialist Republics) favoured retention of the article as drafted, and suggested that its place in the convention should be determined by the Drafting Committee.

40. Miss AVELINE (France), referring to the Italian representative's statement, said that her delegation had indeed withdrawn its proposal on the very clear understanding that a reference to article 7, which dealt with the subject of controlled delivery, would be included in the article on a co-ordination agency. Her delegation would have serious doubts concerning the general will to achieve consensus if the article under consideration were to be deleted.

41. Mr. TRINCCELITO (United States of America), supported by Mrs. THISTLETHWAITE (United Kingdom), doubted whether it was wise to single out specific articles for mention in the text relating to co-ordination; the inference might be that articles which were not referred to did not need to be the subject of effective co-ordination. It would therefore be better if the article were to end with the words "illicit traffic", or perhaps better still if it were to be deleted for the reason given by the representative of Mexico.

42. Mr. LOPEZ (Argentina) favoured deletion of the article.

43. Miss AVELINE (France) said it was her firm understanding that the Committee had formally decided to include a reference to article 7 in the co-ordination agency article.

44. Mr. CARBONEZ (Belgium) confirmed the previous speaker's understanding of the situation.

45. Mr. SAINT-DENIS (Canada) said that his delegation would not oppose deletion of the article.

46. Mrs. ADEGBOKUN (Nigeria) wondered why a co-ordination agency article should not be included in the draft convention when similar provisions were to be found in the Single Convention of 1961, and the 1971 Convention on Psychotropic Substances.

47. Mr. SZEKELY (Mexico), supported by Mr. LECAROS DE COSSIO (Bolivia), pointed out that the article under consideration merely called for national arrangements which States might be expected to take on their own initiative, and might therefore be deleted.

48. Mr. MAROTTA (Italy) believed that, where domestic law and legislative arrangements permitted, the establishment of central co-ordinating agencies at the national level would be among the most effective ways of curbing illicit traffic.

49. Mr. SABOIA (Brazil) said that although his delegation had no objection to the substance of the article, he could agree to its deletion.

50. Mrs. ICARDI (Monaco) said that although the action envisaged by the article might, as the Mexican representative had suggested, be self-evident, an explicit provision in the draft convention might be useful.

51. Mr. SZEKELY (Mexico) felt that the concerns of those who opposed deletion of the article would be amply met by the provisions of article 6, paragraph 1(a), as approved by the Drafting Committee.

52. Mr. TEWARI (India) observed that the substance of the article was in keeping with some of the recommendations contained in the Comprehensive Multidisciplinary Outline, as well as with articles 17 and 6 respectively of the Single Convention of 1961, and the 1971 Convention on Psychotropic Substances.

53. Mr. TRINCCELLITO (United States of America) agreed. It might therefore be sufficient to indicate in the Committee's report that the importance of those recommendations had been fully recognized and to dispense with the actual article.

54. The CHAIRMAN asked whether, subject to the inclusion in the report of the Committee of a paragraph drafted on the lines suggested by the United States representative, the Committee could agree to the deletion of the co-ordination agency article.

55. It was so decided.

56. Miss AVELINE (France), supported by Mr. MAROTTA (Italy), formally requested that the reservations she had expressed should be mentioned in the Committee report.
Article 18 bis (E/CONF.82/C.2/L.41/Rev.1) (concluded)

57. Mr. TRINCELLITO (United States of America), introducing the proposal, said that its text reproduced the wording used in the Single Convention of 1961 and the 1971 Convention on Psychotropic Substances, and suggested that the Board’s reports would be even more eagerly awaited in the light of its new responsibilities in respect of chemicals and precursors, materials and equipment.

58. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested that the Board should report to the Council through the Commission, which might make such comments as it saw fit, might suffice. Otherwise there might be a risk of reopening the debate on the Board’s functions.

59. Mr. SAINT-DENIS (Canada) recognized that the purpose of the proposed text was merely to set out in an explicit manner the mechanism whereby the Board should exercise its functions concerning articles 8, 9 and 11 bis of the draft convention.

60. Mr. TEWARI (India) suggested that, for purposes of alignment with the provisions of article 17, paragraph 1(a) just adopted, the words “an account of the explanation, if any, given by or required of Governments” in the proposal before the Committee might be amended to read “an account of any relevant information furnished or contributed by a Party or Parties”.

61. Mr. BARNETT (Jamaica) said he was inclined to support the USSR representative’s view that a text of the type proposed should be limited to the customary procedural formula.

62. In more general terms, he observed that countries were being called upon to provide a growing number of increasingly voluminous reports under the provisions of various instruments and agreements; there was a danger that the burden would become unbearable.

63. Mr. SABOIA (Brazil) shared the views of the preceding speaker concerning the heavy burden of reporting called for.

64. He feared that the adoption of the proposal under consideration might upset the very delicate balance which had been struck by the Committee between the functions of the Board and the Commission.

65. Mr. HULTSTRAND (Sweden) endorsed the remarks of the USSR and Canadian representatives.

66. Mr. LAVIÑA (Philippines) agreed with the views expressed by the USSR, Jamaican and Brazilian representatives and considered that the second sentence of paragraph 2 of article 18 bis should reproduce the wording of the original Conventions.

67. The CHAIRMAN suggested that the Committee might adopt article 18 bis on the understanding that the Drafting Committee would clear up any drafting problems.

68. It was so decided.

Article 19 (concluded)

69. Mr. BABAYAN (Union of Soviet Socialist Republics) suggested that the wording of the 1961 and 1971 Conventions should be used for article 19.

70. Mr. SAINT-DENIS (Canada) agreed.

71. He recalled that the working group of Committee I which had considered article 2, paragraph 1 had expressed a strong desire for the inclusion of a non-derogation clause, making it clear that the provisions of the new convention in no way affected obligations assumed under the 1961 and 1971 Conventions.

72. Mr. STEWART (United States of America) agreed with the USSR representative concerning article 19 and with the Canadian representative’s remark concerning the inclusion of a non-derogation clause.

73. Mr. EDWARDS (United Kingdom) confirmed what had been stated by the Canadian representative.

74. Mr. SAINT-DENIS (Canada) proposed that the following text should be included in article 19:

“The provisions of the present Convention shall not 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.”

75. Mr. GUNEY (Turkey) said he would not object to that wording if a consensus could be achieved, but wondered whether it was really necessary since the matter was covered by the Law of Treaties.

76. Mr. LAVIÑA (Philippines) also doubted whether that wording should be included in article 19.

77. Mr. ALMOSLECHNER (Austria) said he favoured the inclusion of the non-derogation clause.

78. Mr. SIBLESZ (Netherlands) said that, as the only objection raised so far to the inclusion of the clause was that it might be superfluous, he thought it preferable to include it.

79. Mr. TEWARI (India) endorsed the views of the Canadian and United States representatives. As the preamble stated that the provisions of the draft convention were intended to reinforce and supplement those of earlier conventions, he suggested the addition of:

“The provisions of this Convention shall be in addition to and not in derogation of the provisions of the Single Convention on Narcotic Drugs, 1961, the Protocol of 1972 and the Convention on Psychotropic Substances, 1971.”
80. Mr. TORDAL (Norway) agreed with the views expressed by the representatives of Canada, the United Kingdom and the United States and supported the Canadian proposal.

81. Mr. LAVIÑA (Philippines) suggested that the Canadian proposal might stand by itself as a new article 19 bis.

82. Mr. SAINT-DENIS (Canada) accepted the Philippines representative's suggestion.

83. The CHAIRMAN suggested that the Committee might adopt the text of the non-derogation clause proposed by Canada, which would be included as article 19 bis in the draft convention.

84. It was so decided.

85. Article 19 was adopted.

Terminology

86. Mr. BABAYAN (Union of Soviet Socialist Republics) said that a misunderstanding had arisen in the Drafting Committee with regard to the schedules. At the outset of the debate certain delegations, including those of the USSR and France, had tried to find a suitable word in all languages for "schedules", and had proposed "table" in English, "tableau" in French, "cuadro" in Spanish and "tablitsa" in Russian. The Drafting Committee had been informed of that decision in a letter signed by the representatives of the United Kingdom, the United States, France and Spain. He had just learned, however, that the Drafting Committee had doubts about the terms proposed. He therefore suggested that a decision in the matter should be taken by the Committee.

87. The CHAIRMAN confirmed that he had been asked by the Drafting Committee whether a decision had been taken by the Committee on the terms that had been proposed. He suggested that the Committee should authorize him to inform the Drafting Committee that those terms could be used throughout the text of the convention.

88. It was so agreed.

Definitions

89. The CHAIRMAN suggested that, in view of the lack of time, the Committee should authorize him to advise the Drafting Committee on the correct terms for the definitions of narcotic drugs and psychotropic substances to be included in the convention.

90. It was so agreed.

Title of the Convention

91. The CHAIRMAN said that the Drafting Committee and the Secretariat had raised the question whether the title of the convention should be "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances". The most recent international conventions had been entitled "United Nations Convention on . . .", whereas earlier conventions had not mentioned the United Nations.

92. Mr. STEWART (United States of America) suggested that the precedent established by previous conventions, whose titles did not refer to the United Nations should be followed. It would be clear from the imprint that the instrument was a United Nations convention.

93. Following an exchange of views between Mr. BARNETT (Jamaica) and Mr. STEWART (United States of America), the CHAIRMAN said he took it that there was general consensus that the convention should be entitled "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances".

94. It was so agreed.

95. The CHAIRMAN, noting that the Committee had completed its work, expressed thanks to representatives for their co-operation and help in reconciling divergent views and to the Secretariat for the excellent facilities that it had provided.

The meeting rose at 10.55 p.m.
A statement in connection with the adoption of article 17 ("Functions of the Board") in Committee II was submitted in writing by the delegation of the United States of America. In line with the procedure adopted at the 29th meeting in connection with article 12, the statement is summarized in this addendum.

The delegation of the UNITED STATES OF AMERICA said in its written statement that it was the view of the United States that the wording of paragraph 1(a) of article 17 (see document E/CONF.82/C.2/L.13/Add.13, para. 27) did not limit the action of the Board to any specific articles of the Convention. Document E/CONF.82/C.2/L.42 had contained limitations on the articles for which the Board would have responsibility, but the limitation had been removed when the qualifier "in matters related to its competence" had been added. That allowed for Board oversight of implementation of all articles of the Convention in respect of matters related to its competence. That was a compromise between the proposal for full implementation responsibility without restriction, put forward by the Canadian delegation and supported by other delegations, and the Netherlands proposal in document E/CONF.82/C.2/L.42 to limit Board responsibility to specified articles.

In the United States' view, "matters related to its competence" must be interpreted as referring to the competence of the Board under the existing two Conventions as well as any additional functions under the new convention. That interpretation was supported by the "chapeau", which made clear the non-derogation of functions under the existing Conventions. It was also supported by the explanatory comments made by the representative of the Netherlands during the meeting. In that context, Board responsibility and competence would extend to a broad range of actions against illicit traffic as set out in article 35 of the Single Convention and article 21 of the Convention on Psychotropic Substances. Those included national co-ordination, mutual assistance and international co-operation. Additionally, the Board had long-established competence with respect to penal provisions under article 36 of the Single Convention and article 22 of the Convention on Psychotropic Substances. Those articles dealt with punishable offences, alternative forms of punishment, extradition and financial aspects of drug trafficking. Article 37 of the Single Convention supported the argument for competence in such areas as seizure and confiscation.
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