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101ST CONGRESS
1st Session

SENATE

TREATY DOC.
101–1

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, WITH RELATED PROTOCOL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, AND THE ACCOMPANYING PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, BOTH SIGNED AT ROME ON MARCH 10, 1988



JANUARY 4, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

29–118 WASHINGTON : 1989

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 3, 1989.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and the related Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at Rome on March 10, 1988. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Convention and Protocol.

The seizure of the Italian cruise ship *Achille Lauro* in 1985, and the murder of American passenger Leon Klinghoffer, demonstrated that no country, or form of transportation, is immune from the criminal savagery of those who engage in terrorist acts. This Convention is aimed at ensuring that those who engage in such acts on board or against ships engaged in navigation are brought to justice. The Protocol would do the same with respect to acts on or against fixed platforms on the continental shelf. Modeled on earlier conventions dealing with aircraft hijacking and sabotage (to which the United States is a party), they include provisions requiring States to provide severe punishment for such offenses, and to extradite or prosecute those who commit them.

Work on the Convention and Protocol began in 1986 under the auspices of the International Maritime Organization on the basis of an initial draft cosponsored by the Governments of Italy, Austria and Egypt. That work was completed, and the Convention and Protocol adopted by consensus, at an international conference in Rome in March 1988. The United States and 22 other States signed the Convention at that time, and the United States and 20 other States signed the Protocol. It is clear that the Convention already has broad support in the international community, and it is hoped that all States will join in this major step to deter acts against the safety of maritime navigation.

I recommend, therefore, that the Senate give early and favorable consideration to this Convention and Protocol and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC, November 21, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and the accompanying protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, both signed at Rome on March 10, 1988. I recommend that the Treaty and Protocol be transmitted to the Senate for its advice and consent to ratification.

The Convention and Protocol provide an important new basis under international law for combatting acts of terrorist violence on board ships and fixed platforms. Negotiation of the Convention began in mid-1986, after the Assembly of the International Maritime Organization (IMO) called for development of a new international instrument for the suppression of unlawful acts of violence which endanger the safety of maritime navigation. The Assembly's action was taken in the wake of the October 1985 *Achille Lauro* incident, which resulted in the murder of an American citizen, Leon Klinghoffer.

At the IMO's Council's direction, an Ad Hoc Preparatory Committee was convened within the IMO to consider an initial draft of the Convention cosponsored by the Governments of Italy, Austria and Egypt. The Ad Hoc Preparatory Committee met in March and May of 1987 and agreed upon a revised draft of the Convention, as well as upon the adoption of a separate Protocol concerning fixed platforms located on the continental shelf. These texts were further reviewed by the Assembly, as well as the IMO's Legal Committee and the Council. The final texts were adopted by consensus by the 76 nations represented at an International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, held in Rome from March 1–10, 1988 under the auspices of the IMO. The positions taken by the U.S. delegation to the Conference, which were for the most part adopted, were coordinated with interested agencies and reviewed by interested members of the public.

The principal purpose of the Convention and Protocol is to ensure that individuals who commit acts of terrorist violence which endanger the safe navigation of a ship or the safety of a platform are either prosecuted in the stae in which they are found or extradited to another state for prosecution. Following the essential structure and approach of The Hague and Montreal Conventions in

the aviation field, the Convention and Protocol require states to establish certain offenses under their criminal law, to provide a basis for the exercise of criminal jurisdiction in specified circumstances, and to extradite or prosecute any alleged offender found within their territory. The Convention and Protocol thus fill a gap in the international legal regime governing acts of violence on board or against ships engaged in international maritime navigation as well as fixed platforms located on the continental shelf.

The major provisions of the Convention are as follows:

(1) *Scope of the Convention.*—The Convention applies to any ship (broadly defined to include vessels of any type not permanently attached to the seabed) which is navigating or is scheduled to navigate beyond the territorial waters of a single State. Exceptions are made for warships, State-owned or operated ships used for customs or police purposes or as naval auxiliaries, and ships which have been withdrawn from navigation or laid up. The sovereign immunity of warships and other public vessels is preserved. The Convention makes it an offense for a person unlawfully and intentionally to seize or exercise control over a ship by force, threat or intimidation; to perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of the ship; to destroy a ship or damage a ship or its cargo; to place a destructive device or substance on a ship; to damage or destroy maritime navigational facilities; to communicate information known to be false, thereby endangering the safe navigation of a ship; or to kill or injure any person in connection with the commission or attempted commission of any of these offenses. A person also commits an offense by attempting or abetting the commission of any of these offenses, or by threatening to commit certain of them.

(2) *Penalties and Jurisdiction.*—Each State Party is obliged to make the acts covered by the Convention punishable by appropriate penalties which take into account the grave nature of the offenses. Each State is required to establish its jurisdiction over offenses committed against or on board a ship flying its flag, in its territory including its territorial sea, and by its nationals. Each State may, at its option, also establish jurisdiction over offenses: which are committed by stateless persons habitually resident in its territory; during which one of its nationals is seized, threatened, killed or injured; or which are committed in an attempt to compel that State to do or abstain from doing any act.

(3) *Custody.*—Each State is obliged to take into custody an offender or alleged offender found in its territory or to take other measures to ensure that person's presence for such time as is necessary to enable criminal or extradition proceedings to be instituted. States Party are also obliged to take custody from the master of a ship of another State Party of any person reasonably believed to have committed one of the covered offenses; such States may, in turn, request that the flag State accept delivery of the person.

(4) *Extradition or Prosecution.*—The Convention amends existing extradition treaties between Parties to include the covered offenses as extraditable offenses and provides that they shall be extraditable offenses between States which do not make extradition conditional on an extradition treaty. If a State in which an offender is found does not extradite that person or deliver him or her to an-

other State Party for purposes of prosecution, that State is obliged "without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution".

(5) *Reports.*—When a State has taken a person into custody, it must immediately notify those States which have established the required jurisdiction over the offenses, and any other interested States. States Party having reason to believe that a covered offense will be committed must immediately inform those States it believes would have established jurisdiction over such an offense. States Party must also inform the Secretary-General of any relevant information concerning the circumstances of an offense and measures taken in relation to an offender, including the results of any extradition or other legal proceeding.

(6) *Cooperation.*—The Convention requires States Party to afford each other the greatest measure of assistance in connection with criminal proceedings brought in respect of covered offenses, and to cooperate in the prevention of such offenses by taking practicable measure to prevent preparations in their territories for those offenses, by exchanging information, and by coordinating administrative and other preventative measures.

(7) *Limitations.*—The Convention explicitly provides that its provisions do not affect the immunities of warships and other Government ships operated for non-commercial purposes, or the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag. In addition, the Convention does not exclude any criminal jurisdiction that may be exercised in accordance with national law.

Article 16 of the Convention, concerning dispute settlement, permits States Parties to submit disputes to the International Court of Justice in the event that those disputes cannot be settled by arbitration. It is my recommendation that, at the time of ratification, the United States exercise its right under paragraph 2 of that Article to declare, by means of reservation, that it does not consider itself bound to submit to the compulsory jurisdiction of the Court in respect of disputes arising under this Convention.

The Protocol applies the provisions of the Convention to offenses committed on board or against fixed platforms located on the continental shelf. The term "fixed platform" is defined to include an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources, or for other economic purposes. Thus, oil rigs, floating hotels, and similar platforms will be afforded the same protection by the Protocol as ships are afforded by the Convention.

The Convention will enter into force ninety days after the date on which fifteen States have signed without reservation or have deposited instruments of ratification, acceptance, approvel or accession. The Protocol may enter into force ninety days after the date on which three States have signed without reservation or deposited similar instruments, provided that the Convention must first be in force. A State may only become Party to the Protocol if it has become Party to the Convention.

Proposed legislation necessary to implement the Convention will be submitted to the Congress in the near future.

Respectfully submitted,

GEORGE P. SHULTZ.

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

The States Parties to this Convention:

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promoting of friendly relations and co-operation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the University Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Considering that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the people of the world in the safety of maritime navigation,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Being convinced of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

Recalling resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, *inter alia,* "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

Recalling further that resolution 40/61 "unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

Recalling also that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

Having in mind resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called

for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

Noting that acts of the crews which are subject to normal shipboard discipline are outside the purview of this Convention,

Affirming the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

Affirming further that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

Recognizing the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law.

Have agreed as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1. This Convention does not apply to:

(a) a warship; or

(b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or

(c) a ship which has been withdrawn from navigation or laid up.

2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:

(a) against or on board a ship flying the flag of the State at the time the offence is committed; or

(b) in the territory of that State, including its territorial sea; or

(c) by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) it is committed by a stateless person whose habitual residence is in that State; or

(b) during its commission a national of that State is seized, threatened, injured or killed; or

(c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction to accordance with paragraphs 1 and 2 of this article.

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1. The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who he has reasonable grounds to believe has committed one of the offences set forth article 3.

2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person

whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. 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. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3 including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;

(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present

shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:

(a) the circumstances of the offence;

(b) the action taken pursuant to article 13, paragraph 2;

(c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the prodeedings to the Secretary-General.

3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by

all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1. This Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Convention;

(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;

(iv) the receipt of any declaration or notification made under this Convention;

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In witness whereof the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

Done at Rome this tenth day of March one thousand nine hundred and eighty-eight.

Certified true copy in the English, French and Spanish languages of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, the original of which is deposited with the Secretary-General of the International Maritime Organization.

For the Secretary-General of the International Maritime Organization:

——— ———.

Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf

The States Parties to this Protocol,

Being parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,

Recognizing that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

Taking account of the provisions of that Convention,

Affirming that matters not regulated by this Protocol continue to be governed by the rules and princples of general international law,

Have agreed as follows:

ARTICLE 1

1. The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the Convention") shall also apply *mutatis mutandis* to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

2. In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.

3. For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

ARTICLE 2

1. Any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or

(c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or

(d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or

(e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridicial person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:

(a) against or on board a fixed platform while it is located on the continental shelf of that State; or

(b) by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) it is committed by a stateless person whose habitual residence is in that State;

(b) during its commission a national of that State is seized, threatened, injured or killed; or

(c) it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

ARTICLE 5

1. This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Orga-

nization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 6

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 7

1. This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

4. A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

ARTICLE 8

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment

to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 9

1. This Protocol shall be deposited with the Secretary-General.
2. The Secretary-General shall:
   (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
      (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
      (ii) the date of entry into force of this Protocol;
      (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
      (iv) the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;
   (b) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.
3. As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United States for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

Done at Rome this tenth day of March one thousand nine hundred and eighty-eight.

Certified true copy in the English, French and Spanish languages of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988, the original of which is deposited with the Secretary-General of the International Maritime Organization.

For the Secretary-General of the International Maritime Organization.

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101ST CONGRESS
1st Session

SENATE

TREATY DOC.
101-2

ILO CONVENTION (NO. 160) CONCERNING LABOR STATISTICS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CERTIFIED COPY OF THE CONVENTION (NO. 160) CONCERNING LABOR STATISTICS, ADOPTED BY THE INTERNATIONAL LABOR CONFERENCE AT GENEVA ON JUNE 25, 1985



JANUARY 4, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

29-118 WASHINGTON : 1989

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 3, 1989.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a certified copy of the Convention (No. 160) Concerning Labor Statistics, adopted by the International Labor Conference at Geneva on July 25, 1985. I transmit also for the Senate's information a certified copy of the recommendation (No. 170) on the same subject, adopted by the International Labor Conference on the same date, which amplifies some of the Convention's provisions. No action is called for on the recommendation.

The report of the Department of State, with a letter from the Secretary of Labor, concerning the Convention is enclosed.

As explained more fully in the enclosed letter from the Secretary of Labor, the Government of the United States already collects, compiles and publishes basic labor statistics in all nine subject areas covered by Convention 160. Ratification of this Convention, therefore, would not require the United States to alter in any way its law or practice in this field.

Moreover, as I stated in transmitting International Labor Organization (ILO) Convention 144 to the Senate on April 10, 1986, ratification by the United States of so few ILO Conventions makes more difficult our attempts to take other governments to task for failing to comply with ILO instruments they have ratified. In part for this reason, the Senate gave its advice and consent to the ratification of ILO Convention 144. I accordingly recommend that the Senate also give its advice and consent to the ratification of ILO Convention 160.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC, November 1, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for advice and consent to ratification, a certified copy of the Convention (No. 160) Concerning Labor Statistics, adopted by the International Labor Conference at Geneva on June 25, 1985. A certified copy of a Recommendation (No. 170) amplifying some of the provisions of the Convention is enclosed for the Senate's consideration.

The Convention calls upon ratifying governments to collect, compile and publish basic labor statistics in one of nine subject areas. The Recommendation provides suggestions on how ratifying governments might implement the provisions of the Convention.

The Secretary of Labor, in her enclosed letter, provides additional details concerning the Convention and Recommendation. She states in the analysis enclosed with her letter that current U.S. national practices in assembling labor statistics meet or surpass the requirements of Convention 160 in all nine subject areas. All interested departments and agencies concur in her view.

I am pleased to join with the Secretary of Labor in recommending that the Convention be transmitted to the Senate for advice and consent to ratification, a step which is consistent with our policy of support for and active participation in the work of the ILO.

Respectfully submitted,

GEORGE P. SHULTZ.

DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, September 30, 1988.

Hon. GEORGE P. SHULTZ,
Secretary of State,
Washington, DC.

DEAR GEORGE: This will express the coordinated view of the interested departments and agencies with respect to United States ratification of Convention No. 160 (Concerning Labor Statistics) of the International Labor Organization (ILO). It was adopted, along with Recommendation No. 170, which amplifies its provisions, by the International Labor Conference of the ILO on June 25, 1985.

Any member that ratifies Convention No. 160 "undertakes that it will regularly collect, compile and publish basic labor statistics" in at least one of nine specific subject areas. The Convention does not require a member to keep labor statistics in all nine subject areas. The ratifying member is free to choose those areas in which it accepts the obligations of the Convention. The ratifying member also agrees to "take into consideration" ILO standards and guidelines when designing its statistical systems.

The United States Government, employer and worker delegates to the 1985 International Labor Conference voted for adoption of both instruments. Convention No. 160 was adopted by a vote of 422 for, 0 against, with 7 abstentions. Recommendation No. 170 was adopted by a vote of 412 for, 0 against, with 3 abstentions.

The President's Committee on the ILO unanimously agreed at its last meeting on July 15, 1988, to recommend that the President submit Convention No. 160 to the Senate of the United States with a request for advice and consent to ratification. On that date the President's Committee on the ILO was formally advised by its Tripartite Advisory Panel on International Labor Standards that the Panel had unanimously concluded that there are no obstacles in law or practice to United States ratification of Convention No. 160. Current national practices in assembling labor statistics meet or surpass the requirements of Convention No. 160 in all nine subject areas. Therefore, there appears to be no legal impediment to the United States indicating that it will accept the obligations of the Convention in all nine subject areas. I am enclosing a statement that outlines the provisions of Convention No. 160 as well as the relevant United States law and practice.

Therefore, the interested departments and agencies have concluded that ratification of Convention No. 160 would be a positive development in terms of United States interests in the ILO, and recommend that the President submit it to the Senate with a request for advice and consent to ratification.

With regard to Recommendation No. 170, we recommend that pursuant to the obligations under paragraph 7(a) of Article 19 of

the ILO Constitution, the State Department should transmit it to the Congress for such action as it may deem appropriate.

Sincerely,

ANN MCLAUGHLIN.

Enclosures.

STATEMENT OF UNITED STATES LAW AND PRACTICE WITH RESPECT TO INTERNATIONAL LABOR ORGANIZATIION CONVENTION NO. 160

The International Labor Organization ("ILO") adopted Convention No. 160, concerning labor statistics, in June 1985. In general, the Convention requires ratifying members to collect basic labor statistics in up to nine areas of economic activity. The following is the statement of the United States law and practice with respect to Convention 160. The statement contains an article-by-article analysis of the requirements of Convention 160, which is separated into four different sections. Articles 1 through 6 are the general provisions of the Convention. Articles 7 through 15 describe the basic labor statistics that may be compiled under the Convention. Articles 16 through 18 describe the manner in which a member may accept the obligations of the Convention. Articles 19 through 26, with the exception of paragraphs 3 and 4 of Article 21, contain the standard final provisions for ILO Conventions. The statement also includes a description of the current United States data collection practices concerning the various statistics required under Convention 160. The appendices to the statement include: (1) texts of Convention No. 160 and the related ILO Recommendation 170; (2) a report by the Department of Labor's Bureau of Labor Statistics ("BLS") describing the BLS programs which meet the requirements of Articles 7 through 15 of Convention 160; (3) sample outputs from the relevant BLS programs; and (4) the negotiating history of Convention 160.

The Tripartite Advisory Panel on International Labor Standards ("TAPILS"), consisting of legal advisors from the Departments of Labor, State and Commerce, from the American Federation of Labor and Congress of Industrial Organizations and from the United States Council for International Business, has unanimously concluded that there are no legal obstacles in law or practice to ratification of Convention 160 by the United States. TAPILS' own independent analysis, as well as consultations with the ILO and the BLS, has determined that current practices of the United States in assembling labor statistics meet or surpass the requirements of Convention 160 in all nine subject areas. Therefore, there appears to be no legal impediment to the United States indicating that it will accept the obligations of the Convention in all nine subject areas.

The review of Convention 160 was conducted in accordance with the three ground rules for tripartite review of ILO conventions agreed upon during the ratification of Convention 144. The three grounds rules are: 1) each and every ILO convention will be examined on its own merits on a tripartite basis; 2) if there are any differences between the Convention and Federal law and practice, they will be dealt with in the normal legislative process; and 3) there is no intention to change State law and practice by Federal

action through ratification of ILO conventions and the tripartite examination will include possible conflicts between Federal and State law that would be caused by ratification.

GENERAL PROVISIONS

Article 1

Under this article, the ratifying member undertakes to "regularly collect, compile and publish basic labor statistics" in any or all of nine areas. These statistics will be expanded according to the ratifying country's available resources.

Article 2

Under this article, a ratifying member "shall take into consideration" the ILO's standards and guidelines when it is designing or revising the methods used in the development of the statistics required under Convention 160.

Currently, the BLS takes ILO standards and guidelines into consideration in developing labor statistics programs. Such consideration facilitates BLS's comparisons of United States and foreign labor conditions which draws on ILO publications such as International Labor Office, International Recommendations on Labor Statistics, Geneva, 1976. BLS also participates in the ILO-sponsored International Conference of Labor Statisticians, convened every 5 years, which helps formulate ILO standards and guidelines on labor statistics.

Article 3

Under this article, the ratifying member promises to consult "representative organizations of employers and workers" in designing or revising the statistics required under Convention 160.

Currently, the United States, through the BLS, continuously consults with employer and worker organizations on the development and modification of labor statistics programs. The consultation typically takes place at twice-a-year meetings between BLS staff and the long-standing BLS Business and Labor Research Advisory councils.

Article 4

Under this article, the ILO assures ratifying members that they are not obligated under the Convention to publish data concerning any single individual, household or enterprise.

Article 5

Under this article, the ratifying member undertakes to communicate to the ILO the published statistics that it is compiling in accordance with the Convention. This information should include reference information, such as titles and reference numbers and the dates of the publications' release.

Article 6

Under this article, the ratifying member undertakes to describe in detail to the ILO "the sources, concepts, definitions and methodology" used in compiling the labor statistics for this Convention. The ratifying member also undertakes to publish the descriptions and keep them updated.

BASIC LABOR STATISTICS

Article 7

Under this article, the ratifying member shall compile statistics that are representative of the country as a whole concerning the economically active population, employment, unemployment and visible underemployment.

Currently, the BLS compiles such statistics from the monthly Current Population Survey. This Survey contains data concerning the employment status of the noninstitutional population over 16 years of age. The data is analyzed according to age, race, sex, ethnic background and educational attainment as well as other categories. The Survey analyzes data on employed persons according to occupation, industry, hours of work, full- or part-time status and the reasons for working part-time. The Survey also analyzes unemployment persons by occupation and industry. The data includes information on the duration of unemployment, the reasons for unemployment and the methods used to find employment. (See Appendix B, and Appendix C, Exhibit No. 1.)

Article 8

Under this article, the ratifying member shall compile statistics that are representative of the country as a whole concerning the structure and distribution of the economically active population.

Currently, the BLS compiles such statistics from the monthly Current Population Survey. The contents of the Survey are described under Article 7. (See Appendix B, and Appendix C, Exhibit No. 2.)

Article 9

Under section one of this article, the ratifying member shall compile statistics on the average earnings and hours of work for all important categories of workers and branches of economic activity.

Under section two of this article, the ratifying member shall compile, where appropriate, time rates of wages and normal hours of work for all important occupations and branches of economic activity. Any statistics compiled under this article shall be representative of the country as a whole.

Currently, the BLS compiles such statistics from the Monthly Employment and Earnings Series and from its Industry Wage Survey program. The Survey includes data on the gross hours and earnings of workers in 454 industries. The Survey also contains hourly earnings of workers in the major manufacturing industries and the real average weekly earnings for major industrial groups. The Survey also provides nationwide averages and distributions of

earnings for selected occupations in major industries. (See Appendix B, and Appendix C, Exhibit No. 3.)

Article 10

Under this article, the ratifying member shall compile statistics of the wage structure and distribution for employees in important branches of economic activity.

Currently, the BLS compiles such statistics from its Industry Wage Survey program. These Industry Surveys include data on the averages and distributions of earnings for representative occupations analyzed nationwide and according to regions and selected areas. The Surveys also include data on scheduled weekly hours and supplementary benefits. (See Appendix B, and Appendix C, Exhibit No. 4.)

Article 11

Under this article, the ratifying member shall compile statistics on labor costs in important branches of economic activity. If possible, the scope of these statistics shall be consistent with the coverage of data on employment and hours of work.

Currently, the BLS compiles such statistics from its quarterly Employment Cost Index. The survey includes compensation and wage data for the total civilian population analyzed according to type of industry and occupational group. Compensation and wages in private industry are analyzed according to industry and occupational group as well as according to the bargaining status of the workers and geographic region. Additional wage and salary data in the private economy is analyzed according to more particular industries such as construction, transportation, finance, real estate, wholesale trade and retail trade, and according to more particular occupational groups such as professional and technical workers, administrators, clerical workers, laborers and those working in services. (See Appendix B, and Appendix C, Exhibit No. 5.)

Article 12

Under this article, the ratifying member shall compute consumer price indices of the consumption patterns of significant population groups or of the total population.

Currently, the BLS computes such indices from its monthly Consumer Price Index. This monthly index measures the price change for a specific array of 382 consumer goods and services. The Index contains data on the average cost of these items in the average American metropolitan area. The Index also contains data for 23 specific metropolitan areas and four geographic regions. Data is also compiled on the cost of selected individual commodities and services. (See Appendix B, and Appendix C, Exhibit No. 6.)

Article 13

Under this article, the ratifying member shall compile statistics on household income and expenditures or, if possible, family income and expenditures. These statistics shall cover all types of

households or families and shall be representative of the country as a whole.

Currently, the BLS compiles such statistics from its annual Survey of Consumer Expenditures and Income. The Survey includes data concerning the income and expenditures of American consumers, analyzed for the United States as a whole and for the various geographic regions. Selected data is further analyzed by income class, family size and other demographic and economic characteristics. (See Appendix B, and Appendix C, Exhibit No. 7.)

Article 14

Under section one of this article, the ratifying member shall compile statistics on occupational injuries. Under section two of this article, the member shall compile statistics on occupational diseases. Any statistics compiled under this article shall be representative of the country as a whole and, where possible, cover all branches of economic activity.

Currently, the BLS compiles such statistics from its annual Survey of Occupational Injuries and Illnesses. The Survey estimates the incidence of occupational injuries and illnesses for private industry. The data includes estimates of the total recorded cases, including fatal and nonfatal cases, lost workday cases, total lost workdays and nonfatal cases without lost workdays. (See Appendix B, and Appendix C, Exhibit 8.)

Article 15

Under this article, the ratifying member shall compile statistics on industrial disputes which are representative of the country as a whole and which cover all branches of economic activity.

Currently, the BLS compiles such statistics from its monthly series on major work stoppages. This monthly series contains data on the number of work stoppages, the number of workers involved and the number of days the workers remained off the job. This data includes all major work stoppages involving one thousand or more workers and lasting more than one shift. (See Appendix B, and Appendix C, Exhibit No. 9.)

ACCEPTANCE OF THE CONVENTION

Article 16

Under section one of this article, the ratifying member accepts the obligations to maintain labor statistics in one or more of the areas described in Articles 7 through 15. Under section two of this article, the member shall specify the areas in which it will maintain labor statistics. The member may, under section three of this article, notify the ILO at a later date that it will maintain labor statistics in additional areas. The member is required under section four of this article to report on the position of its law and practice for those articles in respect of which it has not accepted the obligations of the Convention.

Article 17

Under section one of this article, the ratifying member may initially limit the scope of the statistics it agrees to keep under this Convention to specified categories of workers, sectors of the economy, branches of economic activity or geographical area.

Under section two of this article, the member must indicate the limitations on its ratifications and the reasons for the limitations. Subsequent reports to the ILO shall indicate the extent to which it is proposed that the application of the Convention be expanded.

Under section three of this article, the member may introduce subsequent limitations on the technical scope of the statistics covered by Articles 7 through 15. These limitations should be made after consulting representative organizations of employers and workers, and should be reported in the manner described in section two of this article.

As indicated in the discussion of the requirements of Articles 7 through 15, the United States is presently able to meet the requirements for each of the nine areas of basic labor statistics covered by the Convention. It would not be necessary for the United States to indicate that it is limiting the scope of its acceptance of the obligations of the Convention.

Article 18

This Convention revises the 1938 Convention concerning Statistics of Wages and Hours of Work.

FINAL PROVISIONS

Article 19

The formal ratification of this Convention shall be communicated to the Director-General of the ILO for registration.

Article 20

This Convention will be binding on all members who have registered with the Director-General once two members have registered. Thereafter, the Convention will become binding on members twelve months after they register.

Article 21

Under section one of this article, a member may denounce the entire Convention ten years after the Convention became binding on the member. Such a denunciation takes effect one year after it is communicated to the Director-General.

Under section two of this article, if a member does not denounce the Convention within one year after the Convention has been binding upon the member for ten years, the Convention will continue to be binding upon the member for ten more years.

Under section three of this article, a member may withdraw from the obligations of any of the Articles 7 through 15 by a declaration communicated to the Director-General five years after the Convention became binding upon the member.

The member must, however, maintain the obligations of the Convention for at least one of the Articles 7 through 15. Under section four of this article, if the member does not withdraw its acceptance of its obligations under Articles 7 through 15, then it accepts the obligations of the Convention for five more years. The member may withdraw its acceptance of its obligations under Articles 7 through 15 at subsequent five year intervals.

Article 22

The Director-General shall communicate to the members the registration of all ratifications and denunciations and the dates when those events will come into effect.

Article 23

The Director-General shall communicate all ratifications and denunciations of this Convention to the Secretary-General of the United Nations.

Article 24

The Governing Body of the ILO shall present a report on this Convention and whether it should be revised in whole or in part at such time when the Governing Body considers such a report necessary.

Article 25

If a new Convention is adopted by the conference, revising this Convention in whole or in part, then adoption of the new Convention will mean automatic renunciation of this Convention and members will no longer be allowed to ratify this Convention. This Convention will remain in force for those members who have adopted it but have not accepted the revised Convention.

Article 26

The English and French versions of this Convention are equally authoritative.

International Labour Conference

CONVENTION 160: CONVENTION CONCERNING LABOUR STATISTICS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Seventy-first Session on 7 June 1985, and

Having decided upon the adoption of certain proposals with regard to the revision of the Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63), which is the fifth item on the agenda of the session, and

Considering that these proposals should take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and eighty-five the following Convention, which may be cited as the Labour Statistics Convention, 1985:

I. GENERAL PROVISIONS

Article 1

Each Member which ratifies this Convention undertakes that it will regularly collect, compile and publish basic labour statistics, which shall be progressively expanded in accordance with its resources to cover the following subjects:

(a) economically active population, employment, where relevant unemployment, and where possible visible underemployment;

(b) structure and distribution of the economically active population, for detailed analysis and to serve as benchmark data;

(c) average earnings and hours of work (hours actually worked or hours paid for) and, where appropriate, time rates of wages and normal hours of work;

(d) wage structure and distribution;

(e) labour cost;

(f) consumer price indices;

(g) household expenditure or, where appropriate, family expenditure and, where possible, household income or, where appropriate, family income;

(h) occupational injuries and, as far as possible, occupational diseases; and

(i) industrial disputes.

Article 2

In designing or revising the concepts, definitions and methodology used in the collection, compilation and publication of the statis-

tics required under this Convention, Members shall take into consideration the latest standards and guidelines established under the auspices of the International Labour Organisation.

Article 3

In designing or revising the concepts, definitions and methodology used in the collection, compilation and publication of the statistics required under this Convention, the representative organisations of employers and workers, where they exist, shall be consulted with a view to taking into account their needs and to ensuring their co-operation.

Article 4

Nothing in this Convention shall impose an obligation to publish or reveal data which could result in the disclosure in any way of information relating to an individual statistical unit, such as a person, a household, an establishment or an enterprise.

Article 5

Each Member which ratifies this Convention undertakes to communicate to the International Labour Office, as soon as practicable, the published statistics compiled in pursuance of the Convention and information concerning their publication, in particular—

(a) the reference information appropriate to the means of dissemination used (titles and reference numbers in the case of printed publications and the equivalent descriptions in the case of data disseminated in other forms); and

(b) the most recent dates or periods for which the different types of statistics are available, and the dates of their publication or release.

Article 6

Detailed descriptions of the sources, concepts, definitions and methodology used in collecting and compiling statistics in pursuance of this Convention shall be—

(a) produced and updated to reflect significant changes;

(b) communicated to the International Labour Office as soon as practicable; and

(c) published by the competent national body.

II. BASIC LABOUR STATISTICS

Article 7

Current statistics of the economically active population, employment, where relevant unemployment, and where possible visible underemployment, shall be compiled in such a way as to be representative of the country as a whole.

Article 8

Statistics of the structure and distribution of the economically active population shall be compiled in such a way as to be repre-

sentative of the country as a whole, for detailed analysis and to serve as benchmark data.

Article 9

1. Current statistics of average earnings and hours of work (hours actually worked or hours paid for) shall be compiled covering all important categories of employees and all important branches of economic activity, and in such a way as to be representative of the country as a whole.

2. Where appropriate, statistics of time rates of wages and normal hours of work shall be compiled covering important occupations or groups of occupations in important branches of economic activity, and in such a way as to be representitive of the country as a whole.

Article 10

Statistics of wage structure and distribution shall be compiled covering employees in important branches of economic activity.

Article 11

Statistics of labour cost shall be compiled covering important branches of economic activity. Where possible, these statistics shall be consistent with data on employment and hours of work (hours actually worked or hours paid for) of the same scope.

Article 12

Consumer price indices shall be computed in order to measure variations over time in the prices of items representative of the consumption patterns of significant population groups or of the total population.

Article 13

Statistics of household expenditure or, where appropriate, family expenditure and, where possible, household income or, where appropriate, family income shall be compiled covering all types and sizes of private households of families, and in such a way as to be representative of the country as a whole.

Article 14

1. Statistics of occupational injuries shall be compiled in such a way as to be representative of the country as a whole, covering, where possible, all branches of economic activity.

2. As far as possible, statistics of occupational diseases shall be compiled covering all branches of economic activity, and in such a way as to be representative of the country as a whole.

Article 15

Statistics of industrial disputes shall be compiled in such a way as to be representative of the country as a whole, covering, where possible, all branches of economic activity.

III. ACCEPTANCE OF OBLIGATIONS

Article 16

1. Each Member which ratifies this Convention shall, in pursuance of the general obligations referred to in Part I, accept the obligations of the Convention in respect of one or more of the Articles of Part II.

2. Each Member shall specify in its ratification the Article or Articles of Part II in respect of which it accepts the obligations of this Convention.

3. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of one or more of the Articles of Part II which were not already specified in its ratification. These notifications shall have the force of ratification as from the date of the communication.

4. Each Member which has ratified this Convention shall state, in its reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation, the position of its law and practice on the subjects covered by the Articles of Part II in respect of which it has not accepted the obligations of the Convention and the extent to which effect is given or is proposed to be given to the Convention in respect of such subjects.

Article 17

1. A Member may limit initially the scope of the statistics referred to in the Article or Articles of Part II in respect of which it has accepted the obligations of this Convention to specified categories of workers, sectors of the economy, branches of economic activity or geographical areas.

2. Each member which limits the scope of the statistics in pursuance of paragraph 1 of this Article shall indicate in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation, the Article or Articles of Part II to which the limitation applies, stating the nature of and reasons for such limitation, and shall state in subsequent reports the extent to which it has been possible or it is proposed to extend the scope to other categories of workers, sectors of the economy, branches of economic activity or geographical areas.

3. After consulting the representative organisations of employers and workers concerned, a Member may, by a declaration communicated to the Director-General of the International Labour Office in the month following each anniversary of the coming into force of the Convention, introduce subsequent limitations on the technical scope of the statistics covered by the Article or Articles of Part II in respect of which it has accepted the obligations of the Convention. Such declarations shall take effect one year after the date on which they are registered. Each member which introduces such limitations shall provide in its reports on the application of the Convention submitted under article 22 of the Constitution of the

International Labour Organisation the particulars referred to in paragraph 2 of this Article.

Article 18

The Convention revises the Convention concerning Statistics of Wages and Hours of Work, 1938.

IV. FINAL PROVISIONS

Article 19

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 20

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 21

1. A Member which has ratified this Convention may denounce it, after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.
3. After consulting the representative organisations of employers and workers concerned, a Member which has ratified this Convention may, after the expiration of five years from the date on which the Convention first comes into force, by a declaration communicated to the Director-General of the International Labour Office, withdraw its acceptance of the obligations of the Convention in respect of one or more of the Articles of Part II, provided that it maintains its acceptance of these obligations in respect of at least one of these Articles. Such withdrawal shall not take effect until one year after the date on which it was registered.
4. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of five years mentioned in paragraph 3 of this Article, exercise the

right of withdrawal provided for in that paragraph, shall be bound by the Articles of Part II in respect of which it has accepted the obligations of the Convention for another period of five years and, thereafter, may withdraw its acceptance of those obligations at the expiration of each period of five years under the terms provided for in this Article.

Article 22

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 23

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 24

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 25

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 21 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 26

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the convention duly adopted by the General Conference of the International Labour Organisation during its Seventy-first Session which was held at Geneva and declared closed the twenty-seventh day of June 1985.

In faith whereof we have appended our signatures this twenty-seventh day of June 1985.

M. ENNACEUR,
The President of the Conference.

FRANCIS BLANCHARD,
The Director-General of the International Labour Office.

International Labour Conference

Recommendation 170: Recommendation concerning labour statistics

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Seventy-first Session on 7 June 1985, and

Recognising the need for reliable labour statistics both in developed and in developing countries, particularly for the purposes of planning and monitoring social and economic progress, as well as for industrial relations,

Having decided upon the adoption of certain proposals with regard to the revision of the Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63), which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Labour Statistics Convention, 1985,

adopts this twenty-fifth day of June of the year one thousand nine hundred and eighty-five the following Recommendation, which may be cited as the Labour Statistics Recommendation, 1985:

I. Basic labour statistics

Statistics of the Economically Active Population, Employment, Unemployment and Underemployment

1. (1) Current statistics of the economically active population, employment, where relevant unemployment, and where possible visible underemployment should be compiled at least once a year.

(2) These statistics should be classified according to sex and, where possible, age group and branch of economic activity.

2. (1) With a view to meeting long-term needs for detailed analysis and for benchmark purposes, statistics of the structure and distribution of the economically active population should be compiled at least once every ten years.

(2) These statistics should be classified at least according to sex, age group, occupational group or level of qualifications, branch of economic activity, geographical area and status in employment (such as employer, own-account worker, employee, unpaid family worker, member of producers' co-operative).

Statistics of Wages and Hours of Work

3. (1) Current statistics of average earnings and hours of work (hours actually worked or hours paid for) should be compiled at least once a year.

(2) These statistics should be classified at least according to branch of economic activity and sex, where relevant according to size of establishment and geographical area and, where possible, age group and occupational group or level of qualifications.

4. (1) Where appropriate, current statistics of time rates of wages and normal hours of work should be compiled at least once a year.

(2) These statistics should be classified at least according to branch of economic activity and, where relevant, according to sex, age group, occupation or occupational group or level of qualifications, size of establishment and geographical area.

5. (1) With a view to meeting long-term needs for detailed analysis and for benchmark purposes, statistics of wage structure and distribution should be compiled at regular intervals, if possible once every five years.

(2) These statistics should provide—

(a) data on earnings and hours of work (hours actually worked or hours paid for) classified at least according to sex, age group, occupation or occupational group or level of qualifications, branch of economic activity, size of establishment and geographical area;

(b) detailed data on the composition of earnings (such as basic pay, premium pay for overtime, remuneration for time not worked and bonuses and gratuities) and of hours of work (hours actually worked or hours paid for); and

(c) data on the distribution of employees according to levels of earnings and hours of work (hours actually worked or hours paid for), classified according to important characteristics of employees, such as sex and age group.

6. (1) With a view to meeting long-term needs, statistics of labour cost should be compiled at least once every five years.

(2) These statistics should provide data on the level and composition of labour cost, classified according to branch of economic activity.

Consumer Price Indices

7. (1) A general consumer price index should be computed and published for significant population groups or for the total population, covering all groups of consumption items.

(2) Consumer price indices should be published separately for important groups of consumption items, such as food, drink and tobacco; clothing and footwear; housing; fuel and lighting; and other significant categories.

8. The consumer price indices should be computed and published, if possible once a month, but at least once every three months.

9. The weights used to compute the consumer price indices should be reviewed at least once every ten years, and adjusted when significant changes in the consumption patterns are revealed.

10. The prices used to compute the consumer price indices should be representative of the respective purchasing habits (for example, regarding outlets and the nature and quality of articles) of the population groups concerned.

Statistics of Household Expenditure and Household Income

11. (1) Statistics of household expenditure or, where appropriate, family expenditure and, where possible, household income or, where appropriate, family income, should be compiled at least once every ten years.

(2) These statistics should provide, inter alia, in respect of households or families as the case may be—

(a) detailed data on expenditure;

(b) where possible, detailed data on income according to level and source of income;

(c) detailed data on their composition, according to sex, age group and other significant characteristics of their members; and

(d) data on expenditure and, where possible, income, classified according to their size and type, expenditure class and, where possible, income class.

Statistics of Occupational Injuries and Occupational Diseases

12. (1) Statistics of occupational injuries should be compiled at least once a year.

(2) These statistics should be classified at least according to branch of economic activity and, as far as possible, according to significant characteristics of employees (such as sex, age group and occupation or occupational group or level of qualifications) and of establishments.

13. (1) As far as possible, statistics of occupational diseases should be compiled at least once a year.

(2) These statistics should be classified at least according to branch of economic activity and, as far as possible, according to significant characteristics of employees (such as sex, age group and occupation or occupational group or level of qualifications) and of establishments.

Statistics of Industrial Disputes

14. (1) Statistics of industrial disputes should be compiled at least once a year.

(2) These statistics should be classified at least according to branch of economic activity.

Statistics of Productivity

15. Statistics of productivity should be progressively developed and compiled covering important branches of economic activity.

II. STATISTICAL INFRASTRUCTURE

16. For the purposes of collecting and compiling the labour statistics in pursuance of Part I of this recommendation, Members should progressively develop the appropriate national statistical infrastructure. The major elements of such an infrastructure should include—

(a) A comprehensive and up-to-date register of establishments or enterprises for the purposes of surveys or censuses;

such a register should be sufficiently detailed to permit the selection of samples of establishments or enterprises;

(b) a co-ordinated system for the implementation of surveys or censuses of establishments or enterprises;

(c) a capability for the implementation of a continuous and co-ordinated series of national surveys of households or individuals; and

(d) access for statistical purposes, with appropriate safeguards for their confidential use, to administrative records (such a those of employment services, social security bodies, labour inspection services).

17. Members should establish appropriate national standard classifications, and should encourage and co-ordinate the observance as far as possible of these classifications by all bodies concerned.

18. Members should take the necessary steps to harmonise the statistics compiled in pursuance of this recommendation from different sources and by different bodies.

19. (1) In designing or revising the concepts, definitions and methodology used in the collection, compilation and publication of the statistics provided for in this Recommendation, Members should take into consideration the international recommendations on labour statistics established under the auspices of the International Labour Organisation, and relevant recommendations of other competent international organisations.

(2) Members should review and, if appropriate, revise or update the concepts, definitions and classifications used in compiling labour statatistics in pursuance of this Recommendation when the relevant international standards and guidelines are revised, or when new ones are established.

20. In designing or revising the concepts, definitions and methodology used in the collection, compilation and publication of the statistics provided for in the Labour Statistics Convention, 1985, and in this Recommendation, Members might seek assistance from the International Labour Office.

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101ST CONGRESS
1st Session

SENATE

TREATY DOC.
101-3

CONSULAR CONVENTION WITH THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONSULAR CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA SIGNED AT BELGRADE JUNE 6, 1988



MARCH 15, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

29-118 WASHINGTON : 1989

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 13, 1989.*

To the Senate of the United States:

I am transmitting, for the Senate's advice and consent to ratification, the Consular Convention between the United States of America and the Socialist Federal Republic of Yugoslavia signed at Belgrade June 6, 1988. I am also transmitting, for the information of the Senate, the report of the Department of State with respect to the Convention.

The signing of this Convention is a significant step in the process of improving and broadening the relationship between the United States and Yugoslavia. Consular relations between the two countries are not the subject of a modern bilateral agreement. This Convention will establish firm obligations on such matters as the notification of consular officers of the arrest and detention of their citizens and permission for consular officers to visit their citizens who are under detention and to protect the rights and interests of their nationals and juridical persons.

The people of the United States and Yugoslavia enjoy a long tradition of friendship. I welcome the opportunity through this Consular Convention to improve further relations between our two countries. I urge the Senate to give the Convention its prompt and favorable consideration.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 22, 1989.

The PRESIDENT:

I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Consular Conventon between the United States of America and the Socialist Federal Republic of Yugoslavia signed at Belgrade June 6, 1988.

This Convention supplements the provision of the Convention between Serbia and the United States of America of 1981 and the provisions of the Vienna Convention on Consular Relations of 1963. This Convention will greatly facilitate the ability of American and Yugoslav consuls to extend assistance to their fellow citizens in numerous ways and should contribute to the growth of travel and commercial contacts between the two countries.

The specific consular functions and services which will be assured on a reciprocal basis include the issuance of passports and visas, performance of notarial services and the representation of the interests of nationals in estate matters. More significantly, the Convention assures that consuls whose nationals are arrested, detained or whose personal freedom is limited in any way will be immediately notified, in no event more than three calendar days after the date of detention, and will have the right to visit, communicate with, and provide necessary assistance to such nationals. The parties will permit visits as soon as possible, but not later than five days from the date on which the consular officer has submitted a request for a visit. The parties shall also permit consular officers to visit a national who, on the basis of a judicial decision, is in prison or is serving a sentence, at intervals not longer than one month.

The Convention's provisions follow the pattern of bilateral consular conventions in force with a number of countries. Articles 2–6 provide for establishment of consular posts, notifications regarding assignments of officers and employees for such posts, and procedures for terminating their activities. Article 10 provides for inviolability of premises, and Article 11 provides for inviolability of consular archives. Under Article 13, consular officers and consular employees are entitled to immunity, with certain enumerated exceptions, from the judicial and administrative jurisdiction of the receiving state with respect to actions taken in the performance of consular functions. Articles 14–22 provide for additional privileges and immunities of consulates and of members of a consulate and their families. These articles reflect prevailing international practice.

Articles 24–43 relate to consular functions which include, in addition to the functions referred to above, representing the interests of nationals with respect to vessels and aircraft.

On June 6, 1988, a Joint Statement on the subject of dual nationals was signed by representatives of the United States and Yugoslavia. This Joint Statement represents an understanding between the parties that, subject to certain conditions consular officers will be entitled to notification of and contact with arrested Yugoslav nationals who are also U.S. nationals permanently residing in the United States. While the Joint Statement relates to consular matters addressed in the Convention, neither the United States nor Yugoslavia regard it as part of the Convention.

This Consular Convention will facilitate our bilateral relations with the Socialist Federal Republic of Yugoslavia and advance the interests of nationals of both countries. I recommend that the Convention be transmitted to the Senate for its advice and consent to ratification.

Respectfully submitted,

MICHAEL H. ARMACOST.

Consular Convention Between the United States of America and the Socialist Federal Republic of Yugoslavia

The United States of America and the Socialist Federal Republic of Yugoslavia:

Desiring to develop and regulate consular relations, and thereby to contribute towards further developing the friendly relations between the two countries, and to facilitate the protection of their national interests and of the rights and interests of their nationals,

Desiring to supplement the provisions of the Vienna Convention on Consular Relations of 1963,

Have decided to conclude this Consular Convention and have appointed as their plenipotentiaries for this purpose:

For the United States of America:

John C. Whitehead,
Deputy Secretary of State.

For the Socialist Federal Republic of Yugoslavia:

Budimir Loncar,
Federal Secretary for Foreign Affairs.

Who, having communicated to each other their respective full powers, which were found in good and due form, have agreed as follows:

Part I.—Introduction

Article 1.—Definitions

For the purpose of the present Convention, the terms listed below shall have the following meanings:

(a) "Consulate" means a consulate-general, consulate, vice-consulate, or consular agency;

(b) "Consular district" means the area assigned to a consulate for the exercise of consular functions;

(c) "Head of a consulate" means the consul-general, consul, vice-consul or consular agent who is charged by the sending State to head a consulate;

(d) "Consular officer" means any person, including the head of a consulate, who is charged by the sending State with the performance of consular functions;

(e) "Consular employee" means any person who performs administrative, technical, or service duties at a consulate;

(f) "Member of a consulate" means a consular officer or consular employee;

(g) "Member of the family" means the spouse, minor child or other relative of a member of a consulate who is part of his household and who is dependent upon him;

(h) "Consular premises" means buildings or parts of buildings, as well as the grounds ancillary thereto, used exclusively for the purposes of a consulate, regardless of ownership;

(i) "Consular archives" means all official correspondence, codes and ciphers, documents, records, files, tapes and books, office equipment, as well as office furniture intended for their storage and safekeeping;

(j) "Vessel of the sending State" means any vessel sailing under the flag of the sending State, in accordance with the law of the sending State, excluding warships;

(k) "Aircraft of the sending State" means any aircraft flying under the nationality and registration marks of the sending State, in accordance with the law of the sending State, excluding military aircraft;

(l) "law" means

For the United States of America

—all federal, State and local laws, ordinances, regulations, resolutions and similar provisions having the force and effect of law, including determination of courts and other judicial agencies;

For the Socialist Federal Republic of Yugoslavia

—regulations and other normative acts in the Socialist Federal Republic of Yugoslavia, which were brought into effect by appropriate Federal, Republic or provincial organs or appropriate other socio-political organs.

PART II.—ESTABLISHMENT OF CONSULATES, APPOINTMENT OF MEMBERS OF A CONSULATE AND TERMINATION OF THEIR FUNCTIONS

ARTICLE 2.—ESTABLISHMENT OF CONSULATES

1. The sending State may establish a consulate in the receiving State only with the consent of the receiving State.

2. The seat of the consulate, its classification, and its consular district, as well as any changes pertaining thereto, shall be determined by agreement between the sending and receiving States.

ARTICLE 3.—APPOINTMENT OF THE HEAD OF A CONSULATE

1. Prior to the appointment of the head of a consulate by the sending State, the consent of the receiving State concerning the proposed person shall be obtained through diplomatic channels.

2. After the consent of the receiving State has been obtained, the sending State shall forward to the receiving State through diplomatic channels the consular commission or other similar document for the appointment of the head of the consulate. This document shall contain the full name of the head of the consulate, his rank, the seat of the consulate and the consular district in which he will exercise his functions.

3. The head of the consulate may enter upon the performance of his functions only after the receiving State has issued to him an exequatur or other authorization. Upon the presentation of the consular commission or other similar document for the appoint-

ment of the head of the consulate, the receiving State shall without delay issue to him an exequatur or other authorization.

4. The receiving State may permit the head of a consulate to exercise his functions on a provisional basis until such time as an exequatur or other authorization has been issued.

5. The competent authorities of the receiving State shall, immediately after issuing the exequatur or other authorization or provisional recognition, take all measures necessary to enable the head of the consulate to exercise his functions and to enjoy the rights, facilities, privileges and immunities granted him under this Convention and under the law of the receiving State.

ARTICLE 4.—TEMPORARY EXERCISE OF THE FUNCTIONS OF HEAD OF CONSULATE

1. If for any reason the head of a consulate is unable to exercise his functions, or if the position of the head of consulate is vacant, the sending State may place its consulate under the temporary charge of a consular officer of the same or of another consulate of the sending State in the receiving State or a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State. The sending State shall notify the receiving State in advance of the full name of the person appointed as acting head of a consulate.

2. A person appointed as acting head of a consulate shall enjoy the same rights, facilities, privileges and immunities enjoyed by a head of a consulate under this Convention.

3. Entrusting a member of a diplomatic staff of the diplomatic mission of the sending State with the functions of acting head of a consulate does not limit the privileges and immunities to which he is entitled by virtue of his diplomatic status.

ARTICLE 5.—APPOINTMENT OF CONSULAR OFFICERS AND CONSULAR EMPLOYEES

1. The sending State may staff its consulate with the number of consular officers and consular employees it considers necessary. The receiving State may, however, require that the number of such consular officers and consular employees be kept within the limits which it considers to be reasonable, having regard to existing circumstances and conditions in the consular district and the needs of the particular consulate.

2. Consular officers shall be nationals of the sending State and shall be neither nationals nor permanent residents of the receiving State.

3. The sending State shall communicate in advance, in writing, to the receiving State the appointment of each consular officer, his full name, functions and class.

4. The sending State shall also notify the receiving State in writing of:

(a) the arrival and entrance upon duty of persons appointed as members of a consulate, their full name, nationality, and functions, their final departure or termination of their functions, as well as other factors affecting their status which may arise while they are working in the consulate;

(b) the arrival and final departure of members of the family of a member of the consulate and when such an individual becomes or ceases to be a member of the family;

(c) the employment or termination of employment of the member of consulate who is a national or permanent resident of the receiving State.

ARTICLE 6.—DECLARING *PRESONA NON GRATA* AND TERMINATING FUNCTIONS OF MEMBERS OF A CONSULATE

1. The receiving State may at any time, without explanation, notify the sending State through diplomatic channels that a consular officer has become *persona non grata* or that a consular employee is unacceptable. In such case, the sending State shall recall such person or terminate his functions in the consulate.

2. If the sending State fails within a reasonable time to carry out the obligations under paragraph 1 of this Article, the receiving State may cease to consider the person concerned as a member of the consulate.

3. A person appointed as a member of the consular post may be declared unacceptable before arriving in the territory of the receiving State, or if already in the receiving State, before entering on his duties with the consular post. In such a case, the sending State shall withdraw his appointment. The receiving State shall not be obliged to give the sending State reasons for its decision.

4. The functions of a member of a consulate shall come to an end, *inter alia,* upon the:

(a) notification by the sending State to the receiving State that his functions have come to an end;

(b) withdrawal by the receiving State of the exequatur or other authorization; or

(c) notification by the receiving State to the sending State that the receiving State has ceased to consider the person as a member of the consulate.

PART III.—RIGHTS, FACILITIES, PRIVILEGES, AND IMMUNITIES

ARTICLE 7.—FACILITIES FOR THE PERFORMANCE OF CONSULAR FUNCTIONS AND PROTECTION OF MEMBERS OF A CONSULATE

1. The receiving State shall insure the proper conditions for the normal operation of a consulate and shall accord full facilities for the performance of the functions of the consulate.

2. The receiving State shall treat consular officers with due respect and afford appropriate protection to prevent any attack upon their person, freedom or dignity. It further shall take all measures necessary to insure that consular officers are able to perform their functions and enjoy the rights, facilities, privileges and immunities provided under this Convention.

3. The receiving State shall likewise afford all appropriate protection to other members of the consulate.

ARTICLE 8.—CONSULAR PREMISES AND RESIDENCES

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the send-

ing State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

ARTICLE 9.—USE OF THE NATIONAL FLAG AND COAT OF ARMS

1. The sending State shall be entitled to display the national coat of arms and the designation of the consulate on the consular premises in the languages of the sending State and the languages of the consular district.

2. The sending State shall be entitled to fly the flag of the sending State on consular premises, the residence of the head of the consulate, as well as on the means of transport of the head of the consulate when used in the performance of his official duties.

3. In exercising the rights provided by this Article, the sending State shall observe the law and customs of the receiving State.

ARTICLE 10.—INVIOLABILITY OF CONSULAR PREMISES

1. The consular premises shall be inviolable. The authorities of the receiving State may not enter the consular premises without the consent of the head of the consulate, the chief of the diplomatic mission of the sending State, or a person designated by one of those persons. The consent of the head of the consulate may, however, be assumed in the case of fire or other disaster, potentially dangerous to person or property, and requiring prompt protective action.

2. Subject to the provisions of paragraph 1 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consulate or impairment of its dignity.

ARTICLE 11.—INVIOLABILITY OF CONSULAR ARCHIVES

The consular archives shall be inviolable at all times and wherever they may be. Documents and objects of an unofficial character shall not be stored in the consular archives.

ARTICLE 12.—FREEDOM OF COMMUNICATIONS

1. A consulate shall be entitled to exchange communications with its government and with diplomatic missions and consular posts of the sending State wherever they may be. For this purpose, the consulate may employ all ordinary means of communication, including diplomatic and consular couriers, diplomatic and consular bags and codes and ciphers. The consulate may install and use a wireless transmitter only with the prior consent of the receiving State.

2. With respect to public means of communication, the same conditions shall be applied in the case of a consulate of the sending State as are applied in the case of the diplomatic mission of the sending State.

3. The official correspondence of a consulate, regardless of the means of communications employed, as well as sealed consular bags and other containers, provided they bear visible external marks of their official character, shall be inviolable. They may con-

tain nothing other than official correspondence and articles intended exclusively for official use.

4. The official correspondence of a consulate, including consular bags and other containers, as described in paragraph 3 of this Article, shall neither be opened nor detained. However, if the competent authorities of the receiving State have serious reason to believe that a consular bag or other container also contains articles other than correspondence, documents and articles intended exclusively for official use, they may request that they be opened in their presence by an authorized representative of the sending State. If the authorities of the said State refuse the request, the bag or other container shall be returned to the place from which it was sent.

5. A consular courier must have an official document certifying his position and indicating the number of packages forming the consular bag. Unless the receiving State consents, he may not be a national of or have his permanent residence in the receiving State. The receiving State shall protect a consular courier in the performance of his functions. A consular courier of the sending State shall enjoy in the receiving State the same rights, privileges, benefits and immunity which are enjoyed by a diplomatic courier of the sending State. The provisions of this paragraph shall likewise apply to *ad hoc* couriers, except that their immunities shall cease when the consular bag has been handed over to the consignee.

6. If a master of a vessel or captain of a civil aircraft of the sending State is charged with an official consular bag, the master or captain shall be provided with an offical document showing the number of containers forming the consular bag entrusted to him; he shall not, however, be considered to be a consular courier. By agreement with the appropriate authorities of the receiving State, and in compliance with safety regulations of the receiving State, the sending State may send a member of the consulate to take possession of the consular bag directly and freely from the master of the vessel or captain of the aircraft or to deliver such a bag to him.

ARTICLE 13.—IMMUNITY OF MEMBERS OF A CONSULATE FROM THE JURISDICTION OF THE RECEIVING STATE

1. A member of a consulate shall enjoy immunity from the jurisdiction of the judicial and administrative authorities of the receiving State with respect to actions taken in the performance of consular functions.

2. The provisions of paragraph 1 of this Article shall not however, apply to civil proceedings:

(a) resulting from contracts that were not concluded by a member of a consulate in his official capacity on behalf of the sending State;

(b) relating to succession in which a member of a consulate was involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) concerning a claim by a third party for damage caused by a vessel, vehicle, or aircraft;

(d) concerning private immovable property in the receiving State, unless the member of the consulate is holding it on behalf of the sending State for the purpose of the consulate;

(e) relating to any private commercial activities engaged in by a member of a consulate in the receiving State outside of his official functions.

3. Measures of execution may be taken against a member of a consulate in civil proceedings, including cases specified in paragraphs 2(a), (b), (c), (d) and (e) of this Article, provided that these measures do not interfere with the performance of consular functions.

4. Consular officers may be arrested or detained pending trial only in case of grave criminal acts and only on the basis of a decision of the competent judicial authority.

5. Except in the case specified in paragraph 4 of this Article, a consular officer may not be imprisoned or subjected to any other form of restriction of personal freedom, except when carrying out a judicial decision of final effect.

6. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings must be conducted with the respect due him by virtue of his official position and, except in the case specified in paragraph 4 of this Article, in such a manner as to cause the least possible disruption of consular functions. If, under the circumstances referred to in paragraph 4 of this Article, it becomes necessary to arrest or detail a consular officer, proceedings against him must be instituted as soon as possible.

7. In case of the arrest or detention of a member of a consulate or the initiation of criminal proceedings against him, the receiving State is obliged to notify the head of the consulate about it as soon as possible. If these measures relate to the head of the consulate, the sending State shall be notified thereof through diplomatic channels by the receiving State.

ARTICLE 14.—EXEMPTION FROM OBLIGATION TO GIVE EVIDENCE

1. A member of the consulate may be called upon to attend as a witness in the course of judicial or administrative proceedings. In the event of the refusal of a consular officer to give evidence at such proceedings, no coercive measures or penalty may be applied to him. A consular employee may not decline to give evidence except in cases mentioned in paragraph 2 of this Article.

2. Members of a consulate are under no obligation to give evidence concerning matters relating to the exercise of their official functions or to produce official correspondence or documents. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

3. In taking testimony of a member of a consulate, the competent authorities of the receiving State shall take all appropriate measures to avoid hindering the performance of his official consular functions. Upon the request of the head of a consulate, such testimony may, when possible, be given orally or in writing at the consulate or at the residence of the person concerned.

ARTICLE 15.—WAIVER OF IMMUNITY

1. The sending State may waive the immunities and exemptions of members of a consulate as provided in Articles 13 and 14 of this Convention. Except as provided in paragraph 2 of this Article, such waiver shall always be express and in writing.

2. In the event a member of a consulate initiates legal proceedings, with respect to which he would enjoy immunity from jurisdiction under Article 13 of this Convention, he may not invoke immunity with regard to any counter-claim directly related to the principal claim.

3. Waiver of immunity from jurisdiction with respect to civil proceedings shall not be held to imply waiver of immunity with respect to the execution of judgment, for which a separate waiver shall be necessary.

ARTICLE 16.—EXEMPTION FROM SERVICES AND DUTIES

Members of a consulate and members of their families shall be exempt from all public or personal contributions and services of any kind, including military service, and other military obligations such as requisitioning, contributions and billeting, in the receiving State.

ARTICLE 17.—EXEMPTION FROM ALIEN REGISTRATION OBLIGATIONS

Members of a consulate and members of their families shall be exempt from all obligations under the law of the receiving State regarding alien registration and residence permits and related regulations normally applicable to aliens.

ARTICLE 18.—EXEMPTION FROM TAXATION OF CONSULAR PREMISES

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

ARTICLE 19.—EXEMPTION OF MEMBERS OF A CONSULATE FROM TAXATION

1. A member of a consulate and members of his family shall be exempt from payment of all federal, republican, state, provincial, regional, municipal or local dues and taxes and similar charges of any kind.

2. The exemption provided by paragraph 1 of this Article shall not apply with respect to:

(a) indirect taxes of a kind normally included in the prices of goods and services;

(b) dues and taxes imposed with respect to private immovable property located in the territory of the receiving State;

(c) estate and inheritance taxes and taxes on the transfer of property rights imposed by the receiving State, except as provided in paragraph 3 of this Article;

(d) dues and taxes on private income derived in the receiving State;

(e) dues and other charges for specific services rendered;

(f) dues and taxes on transactions or on documents relating to transactions, including fees of any kind collected by reason of such transactions, unless exemptions are provided in Article 18 of this Convention.

3. If a member of a consulate or a member of his family dies, no estate, succession, or inheritance tax or any other tax or charge on the transfer of movable property at death, shall be imposed by the receiving State with respect to that property, provided that the presence of the property was due solely to the presence of the deceased in his capacity as a member of a consulate or as a member of the family of a member of a consulate.

4. The receiving State shall permit the export of the movable property of a deceased member of a consulate or member of the family of a member of consulate, except that which was acquired in the receiving State the export of which was prohibited at the time of death.

5. Members of a consulate who employ persons whose wages and salaries are not exempt from the payment of dues and taxes in the receiving State shall observe the requirements under the law of the receiving State relating to an employer's obligation for the collection of dues and taxes.

ARTICLE 20.—EXEMPTION FROM CUSTOMS DUTIES AND INSPECTION

1. All articles, including motor vehicles, imported or exported for the official use of the consulate shall, in conformity with the law of the receiving State, be exempt from customs duties and other dues and taxes imposed on importation or exportation or in connection therewith, except for the costs of storage, cartage and services.

2. Consular officers and members of their families shall be exempt from customs duties and other dues and taxes on the importation or exportation of all articles intended for their personal use, including motor vehicles and articles for the equipment of their households, except for the costs of storage, cartage and services.

3. Consular employees and members of their families shall enjoy the privileges and exemptions specified in paragraph 2 of this Article at time of first installation.

4. Articles designed for personal use shall not exceed the quantities required for direct use by the person accorded an exemption by this Article.

5. Personal baggage of consular officers and members of their families shall be exempt from customs inspection. It may be inspected only in cases where there is serious reason to believe that it contains articles other than mentioned in paragraph 2 of this Article, or articles the importation or exportation of which is prohibited by the laws of the receiving State or articles which are subject to the regulations on quarantine. Such inspection must be under-

taken in the presence of the consular officer concerned or member of his family or a person who has been designated to represent him.

ARTICLE 21.—EXEMPTION FROM REQUISITION

Consular premises, as well as the official means of transport of the consulate, are not liable to any form of requisition. If for the needs of the national defense or other public purposes expropriation of consular premises or residences becomes necessary, all possible measures must be taken by the receiving State to avoid interference with the performance of consular functions and promptly to pay appropriate and effective compensation to the sending State.

ARTICLE 22.—FREEDOM OF MOVEMENT

Subject to its laws and regulations relating to zones the entry into which is prohibited or regulated for reasons of national security, the receiving State shall, on the basis of reciprocity, ensure freedom of travel and movement in its territory for all members of a consulate and members of their families.

ARTICLE 23.—EXCLUSION FROM THE ENJOYMENT OF RIGHTS, FACILITIES, PRIVILEGES AND IMMUNITIES

Members of a consulate and members of their families who are either nationals or permanent residents of the receiving State shall not enjoy the rights, facilities, privileges and immunities provided by this Convention, except immunity from the obligation to give evidence in matters connected with the discharge of official duties as provided in paragraph 2 of Article 14 of this Convention.

PART IV.—CONSULAR FUNCTIONS

ARTICLE 24.—FUNCTIONS OF CONSULAR OFFICERS

A consular officer shall be entitled to:

(a) protect the rights and interests of the sending State and of its nationals and juridical persons;

(b) render assistance and support to nationals and juridical persons of the sending State;

(c) contribute to the development of economic, commercial, cultural, scientific and tourist relations between the sending State and the receiving State;

(d) contribute in other ways to the development of friendly relations between the sending State and the receiving State;

(e) ascertain by all lawful means conditions and developments in the political, commercial, economic, cultural and scientific life of the receiving State, and report thereon to the sending State.

ARTICLE 25.—EXECUTION OF CONSULAR FUNCTIONS

1. In accordance with his authorization from the sending State, a consular officer shall be entitled to carry out the functions described in this Convention, as well as other consular functions entrusted to him by the sending State which are not prohibited by

the law of the receiving State or to which the receiving State does not object.

2. A consular officer shall be entitled to execute his functions only within the limits of the consular district to which he is assigned. A consular officer may execute his functions outside the limits of the consular district only with the advance consent of the receiving State given separately in each instance.

3. In executing his functions, a consular officer may approach orally or in writing:

(a) the competent local authorities in his consular district;

(b) the competent central authorities of the receiving State if and to the extent allowed by the law and customs of the receiving State.

4. With the approval of the receiving State the sending State may perform consular functions in the receiving State on behalf of a third State.

5. A consulate may levy in the territory of the receiving State consular fees authorized under the law of the sending State for consular acts. Any such sums levied shall be exempt from all dues and taxes in the receiving State.

ARTICLE 26.—REPRESENTATION BEFORE THE AUTHORITIES OF THE RECEIVING STATE

1. A consular officer shall be entitled, in accordance with the law of the receiving State, to take appropriate measures for the protection of the rights and interests of nationals of the sending State, including juridical persons, before the courts and other authorities of the receiving State, where, because of absence or any other reason, these nationals are not in a position to undertake timely defense of their rights and interests.

2. The measures referred to in paragraph 1 of this Article shall cease as soon as the national appoints his own representative or himself assumes the defense of his rights and interests.

3. Nothing in this Article, however, shall be construed to authorize a consular officer to act as an attorney-at-law.

ARTICLE 27.—FUNCTIONS RELATING TO TRAVEL DOCUMENTS

A consular officer shall be entitled to:

(a) issue to nationals of the sending State passports or other similar travel documents, extend the validity of the same, cancel them, withdraw them, as well as make other amendments in them;

(b) issue visas or other appropriate documents to persons wishing to travel to or through the sending State.

ARTICLE 28.—FUNCTIONS RELATING TO CITIZENSHIP AND CIVIL STATUS

1. A consular officer shall be entitled to:

(a) register nationals of the sending State;

(b) accept applications and issue or deliver documents on matters of citizenship;

(c) accept any application or declaration relating to vital statistics from nationals of the sending State;

(d) register births and deaths of nationals of the sending State, issue certificates and receive communications and documents relating to the same.

2. The provisions of subparagraphs (c) and (d) of paragraph 1 of this Article do not exempt the persons concerned from obligations under the law of the receiving State respecting these matters.

ARTICLE 29.—NOTARIAL FUNCTIONS

A consular officer shall be entitled:

(a) to receive, draw up and certify statements and documents and perform other notarial functions upon the application of a national of the sending State when such statement or document is intended for use outside the receiving State, and also for any person when such statement or document is intended for use in the sending State;

(b) in connection with the acts specified in paragraph (a) of this Article, to administer an oath or take an affirmation, if required under the law of the sending State;

(c) to certify contracts between nationals of the sending State as well as other documents pertaining to unilateral acts of nationals of the sending State, provided these do not establish, transfer or abolish titles to immovable property located in the receiving State;

(d) to certify copies and photocopies of documents of any kind, and extracts of documents;

(e) to authenticate documents drawn up or issued by the competent authorities of the receiving State and that are intended for use in the sending State;

(f) to certify translations of documents issued by the authorities of the sending State or of the receiving State;

(g) at the request of the competent authorities of the sending State, to take testimony of persons who live in his consular district, regardless of their nationality and without the necessity of making request to the competent authorities of the receiving State, provided that such persons appear voluntarily before the consular officer.

ARTICLE 30.—SERVICE OF JUDICIAL AND OTHER DOCUMENTS

A consular officer shall be entitled to serve judicial and other documents on persons in the receiving State in accordance with existing international agreements which are in force between the sending State and the receiving State or, in the absence of such agreements, in conformity with the law of the receiving State.

ARTICLE 31.—NOTIFICATION OF THE ESTABLISHMENT OF GUARDIANSHIP OVER PERSONS OR TRUSTEESHIP OVER PROPERTY

1. The competent authorities of the receiving State shall notify the consulate in writing of instances in which it is necessary to establish a guardianship over a national of the sending State who is not of age or is not in a position to perform legal acts, or a trusteeship over property of a national of the sending State when for whatever reason such property cannot be administered by the national of the sending State.

2. A consular officer of the sending State may, on matters mentioned in paragraph 1 of this Article, contact the appropriate authorities of the receiving State, and, in particular, may propose that appropriate persons be appointed to act as guardians over persons or trustees over property in accordance with the law of the receiving State.

ARTICLE 32.—NOTIFICATION OF THE DEATH OF A NATIONAL OF THE SENDING STATE

Whenever the competent authorities of the receiving State learn that a national of the sending State has died in the receiving State, they shall immediately notify the appropriate consular officer of the sending State and, upon his request, send him a copy of the death certificate or other documentation confirming the death.

ARTICLE 33.—NOTIFICATION REGARDING ESTATES

1. Whenever the competent local authorities of the receiving State learn of the opening of an estate of a deceased national of the sending State in the receiving State who has in the receiving State no known heir or testamentary executor, they shall without delay notify a consular officer of the sending State.

2. Whenever the competent local authorities of the receiving State learn of the opening of an estate of a person, regardless of nationality, who has left in the receiving State an estate in which a national of the sending State residing outside the receiving State may have an interest under the will of the decedent or otherwise in accordance with the law of the receiving State, they shall as promptly as possible so inform a consular officer of the sending State.

ARTICLE 34.—FUNCTIONS RELATING TO ESTATES

1. A consular officer shall be entitled in accordance with the laws of the receiving State, to:

(a) take appropriate measures to protect and conserve the estate of a deceased national of the sending State located in the receiving State. In this connection he may approach the competent authorities of the receiving State with a view towards protecting the interests of a sending State national, not a permanent resident of the receiving State, unless or until such national is otherwise represented. He may also request the competent authorities of the receiving State to permit him to be present at the inventorying and sealing and, in general, to take an interest in the proceedings;

(b) safeguard the interests of a national of the sending State, who has, or claims to have, a right to an estate in the receiving State of a deceased person, irrespective of the deceased's nationality, and if that interested national is not in the receiving State, or is a minor, as long as the person does not have a duly appointed representative.

2. A consular officer of the sending State shall be entitled to receive for transmission to a national of the sending State who is not a permanent resident of the receiving State any sum of money or other property to which such national is entitled as a consequence

of the death of another person, including shares in an estate, payments based on employment, pension and social benefits systems in general, and proceeds of insurance policies unless the court, agency, or person making distribution directs that transmission be effected in a different manner. The court, agency, or person making distribution may require that a consular officer comply with conditions with regard to:

(a) presenting a power of attorney or other authorization from such national residing outside the receiving State;

(b) furnishing reasonable evidence of the receipt of such money or other property by such national; and

(c) returning the money or other property in the event he is unable to furnish such evidence.

In exercising the rights provided by this paragraph the consular officer is subject to the jurisdiction of the civil courts of the receiving State in the same manner and to the same extent as described in Article 13(2)(b).

3. No provisions of this Article shall authorize a consular officer to act as an attorney-at-law.

ARTICLE 35.—PROVISIONAL CUSTODY OF MONEY AND EFFECTS OF DECEASED SENDING STATE NATIONALS

If a national of the sending State, not a permanent resident of the receiving State, dies during a temporary stay in or transit through the receiving State the consular officer shall be entitled without delay to take provisional custody of the money, documents, and personal effects that were in such national's possession for transfer to an heir or testamentary executor, provided that the deceased person shall not have left an accompanying next-of-kin or authorized representative in the receiving State and provided that such provisional custody will be relinquished to a duly appointed administrator or other authorized person.

ARTICLE 36.—COMMUNICATION WITH NATIONALS OF THE SENDING STATE

1. A consular officer shall be entitled, in his consular district, to communicate with a national of the sending State, to render him assistance or give him advice and, when necessary, to arrange for an interpreter and to assure him legal assistance. If a national of the sending State desires to visit the consular officer or to converse with him, the receiving State shall in no way restrict the access of such national to the consulate of the sending State or prevent the consular officer from visiting him.

2. In any case in which a national of the sending State is subject to arrest, detention or any other form of limitation of his personal freedom, the competent authorities of the receiving State shall inform the consulate of the sending State immediately and, in any event, not later than three days from the date on which the national was placed under any form of limitation of his personal freedom. Upon his request, a consular officer shall be informed of the reasons for which the national has been arrested, detained, or limited in enjoyment of his personal freedom.

3. The competent authorities of the receiving State shall immediately inform the national of the sending State of the rights accorded to him by this Article to communicate with a consular officer.

4. A consular officer shall be entitled to receive from and send to a national of the sending State who is under arrest, detention, or any form of limitation of his personal freedom letters or other forms of correspondence and, when necessary, to take appropriate measures to ensure him legal assistance and representation and to arrange for an interpreter.

5. A consular officer shall be entitled to visit a national of the sending State who is under any form of arrest, detention or any other form of limitation of his personal freedom, and to converse with him in the language of the sending State or of the receiving State. These visits shall take place as soon as possible, but not later than five days from the date on which the consular officer has submitted a request for a visit.

6. In the case of a trial of a national of the sending State in the receiving State, the competent authorities shall, at the request of a consular officer, inform such officer of the charges against such national. The consular officer shall be permitted to attend all phases of the trial of such national which are open to the public.

7. A consular officer shall be entitled to visit a national of the sending State who, on the basis of a judicial judgment, is in prison or is serving a sentence, and to converse and correspond with him in the language of the sending State or of the receiving State. These visits shall be permitted as soon as possible, but not later than five days from the date on which the consular officer has submitted a request for a visit, and on a recurring basis, but at intervals of not longer than one month.

8. A consular officer shall be entitled to provide to a national of the sending State to whom the provisions of this Article apply parcels containing food, clothes, medicaments, and books, published material and writing materials.

9. The rights contained in this Article shall be exercised in accordance with the law of the receiving State and shall not prejudice the normal procedures of the receiving State, provided that such law shall be applied so as to give full effect to the purposes for which these rights are intended.

10. In accordance with Article 24 (a) and (b) a consular officer of the sending State may request the assistance of the authorities of the receiving State in ascertaining the whereabouts of a national of the sending State, and the authorities of the receiving State shall endeavor to provide all appropriate and available information.

ARTICLE 37.—RENDERING ASSISTANCE TO VESSELS

1. A consular officer shall be entitled to provide any type of assistance to vessels of the sending State which are in the territorial or inland waters, ports or anchorages of the receiving State.

2. A consular officer may board a vessel of the sending State as soon as permission to communicate with the shore is granted. On such occasions, he may be accompanied by members of the consulate.

3. The master and members of the crew may meet and communicate with the consular officer, observing, however, the law of the port and the law relating to crossing the border.

4. The consular officer may address the authorities of the receiving State and request their cooperation in carrying out his functions with regard to a vessel of the sending State and with regard to the master of the vessel, members of the crew, passengers and cargo.

ARTICLE 38.—RENDERING ASSISTANCE TO MASTER AND CREW

1. Without prejudice to the rights of the competent authorities of the receiving State, insofar as these rights apply to any of the following provisions, the consular officer shall be entitled to:

(a) investigate any incident occurring aboard a vessel of the sending State and question the master of the vessel and any member of the crew with reference to such incident, to the extent permitted by the law of the sending State;

(b) inspect the vessel's papers, receive information in connection with the voyage and destination of the vessel and also render assistance in connection with the entry, stay and departure of a vessel of the sending State;

(c) participate in the settlement of disputes between the master of a vessel of the sending State and members of the crew, including disputes concerning wages and employment contracts, to the extent permitted by the law of the sending State;

(d) take steps connected with the signing on and discharge of a master of a vessel of the sending State and members of the crew, if such action is permitted under the law of the sending State;

(e) take steps for hospitalization or repatriation of the master of a vessel of the sending State or member of the crew;

(f) receive, draw up or certify all declarations or other documents provided for by the law of the sending State in regard to a vessel of the sending State or its cargo;

(g) undertake other steps to apply the law of the sending State concerning merchant shipping.

2. The consular officer may, if permitted by the law of the receiving State, appear together with the master of a vessel of the sending State or a member of the crew before the courts or other authorities of the receiving State in order to render them any assistance in actions before such courts and authorities.

ARTICLE 39.—PROTECTION OF INTERESTS IN CASE OF INVESTIGATIONS

1. When a court or other competent authority of the receiving State intends to take compulsory actions or to start an official investigation aboard a vessel of the sending State which is in the inland or territorial waters, ports or anchorages of the receiving State, that court or other competent authority must notify the appropriate consular officer. If, because of the urgency of the matter, it has not been possible to inform the consular officer before initiation of such actions, and the consular officer or his representative has not been present when the actions were carried out, the court

or other competent authority of the receiving State shall promptly provide him with a full account of the actions taken.

2. Without prejudice to the provisions of Article 36, a consular officer of the sending State shall be notified immediately in cases of which it is necessary for a competent authority of the port area to question the master of a vessel of the sending State or a member of the crew on shore with regard to incidents other than those referred to in paragraph 1 of this Article.

3. Except at the request of the master of a vessel of the sending State or a consular officer, the judicial or other competent authorities of the receiving State shall not interfere in the internal affairs of the vessel on questions of relations between the members of the crew, labor relations, discipline and other activities of an internal character, when the peace and safety of the receiving State are not violated.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply to ordinary customs, passport and sanitary controls, or, in accordance with treaties in force between the two States, to the saving of human life at sea, prevention of pollution of the sea, or to other measures undertaken at the request of, or with the consent of, the master of the vessel.

ARTICLE 40.—ASSISTANCE TO DAMAGED VESSELS

1. If a vessel of the sending State is wrecked, grounded, or suffers any other damage in the inland or territorial waters, ports or anchorages of the receiving State, the competent authorities of the receiving State shall inform the consulate immediately and inform it of the measures taken for saving the passengers, the vessel, its crew and cargo.

2. The consular officer may give any assistance to a vessel of the sending State, the members of the crew and the passengers, as well as take measures for safeguarding the cargo and repairing the vessel. The competent authorities of the receiving State shall extend all necessary assistance to the consular officer in taking such measures. He may also ask the authorities of the receiving State to undertake such measures.

3. If the owner of the vessel, the master of the vessel or other authorized person is not in a position to undertake the necessary measures for safeguarding the vessel and its cargo, the consular officer may, if permitted under the law of the sending State, undertake on behalf of the owner, those measures which the owner himself would undertake in such a case. The provisions of this paragraph shall also apply to every object belonging to a national of the sending State and representing a part of the cargo of the vessel, whether of the sending State or of a third State, which has been found on or near the shore, or has been brought to a port of the receiving State.

4. A vessel which has suffered damage and its cargo and provisions shall not be subject to customs duties in the territory of the receiving State unless delivered for use in that State.

ARTICLE 41.—FUNCTIONS WITH REGARD TO AIRCRAFT

The provisions of Articles 37 to 40 inclusive of this Convention shall also apply to civil aircraft to the extent they are applicable and on the condition that such application is not contrary to the provisions of any bilateral or multilateral agreement in force between the two States.

ARTICLE 42.—OBSERVING THE LAW OF THE RECEIVING STATE

1. All persons enjoying privileges and immunities under this Convention are obliged, without prejudice to their privileges and immunities, to observe the law and customs of the receiving State, including traffic regulations. Members of a consulate shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

2. Consular officers and consular employees who are nationals of the sending State may not carry on any professional or commercial activity for personal profit in the receiving State other than their official duties, or interfere in the internal affairs of the receiving State.

ARTICLE 43.—PERFORMANCE OF CONSULAR FUNCTIONS BY A DIPLOMATIC MISSION

1. The provisions of this Convention relating to consular functions, rights, facilities, privileges and immunities shall also apply when a diplomatic mission performs consular functions.

2. The names of the members of the diplomatic mission entrusted with the performance of consular functions shall be communicated to the receiving State.

3. The members of the diplomatic mission referred to in paragraph 2 of this Article shall continue to enjoy the privileges and immunities granted them by virtue of their diplomatic status.

PART V

ARTICLE 44.—ENTRY INTO FORCE AND RENUNCIATION

1. The present Convention shall be subject to ratification and shall enter into force after the expiration of thirty days following the date of the exchange of instruments of ratification which shall take place at Washington, D.C.

2. The present Convention shall remain in force until the expiration of six months from the date on which one of the Contracting Parties gives to the other Contracting Party written notification of its intention to terminate the Convention.

3. With the entry into force of this Convention, the Agreement between the Government of the United States of America and the Kingdom of Yugoslavia on taking testimony, concluded by exchange of notes in 1938 shall cease to be in force.

IN WITNESS WHEREOF, the respective plenipotentiaries of the Contracting Parties have signed the present Convention.

Done at Belgrade on this sixth day of June, 1988 in two original copies in the English and Serbo-Croatian languages, both texts being equally authentic.

For the United States of America:

JOHN C. WHITEHEAD.

For the Socialist Federal Republic of Yugoslavia:

BUDIMIR LONCAR.

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101ST CONGRESS
1st Session

SENATE

TREATY DOC.
101-4

UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, DONE AT VIENNA ON DECEMBER 20, 1988



JUNE 20, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

29-118 WASHINGTON : 1989

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 19, 1989.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on December 20, 1988. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Convention.

The production, trafficking, and consumption of illicit narcotics have become a worldwide menace of unprecedented proportions. Narcotics trafficking and abuse threaten the developing and industrialized nations alike, eroding fragile economies, endangering democratic institutions, and affecting the health and well-being of people everywhere. The profits made from the international drug trade are consolidated in the hands of powerful drug lords who operate with impunity outside the law. The widespread corruption, violence, and human destruction associated with the drug problem imperil all nations and can only be suppressed if all nations cooperate effectively in bringing to justice those who engage in illicit trafficking and abuse.

Patterned after many existing U.S. laws and procedures, the present Convention represents a significant step forward in international efforts to control the illicit traffic in narcotic drugs and psychotropic substances. The Convention obligates states party to the agreement to cooperate in suppressing illicit traffic and to take specific law enforcement measures and enact domestic laws, including those relating to money laundering, confiscation of assets, extradition, mutual legal assistance, and trade in chemicals, materials, and equipment used in the illegal manufacture of controlled substances. These and other provisions seek to establish a comprehensive set of laws and guidelines for a concerted and more effective effort on an international basis to combat illicit trafficking.

Having taken 4 years to complete, work on the Convention began in 1984 under United Nations auspices, and it was adopted at an international conference held in Vienna in November and December 1988. The United States and 43 other nations signed the Convention at that time, and 16 others have signed since then. The Vienna Convention is a tribute to the United Nations and represents the broadest and most far-reaching set of laws and agreements ever adopted in this field. It is strongly indicative of the political will of the states that adopted it and puts those who profit from this evil trade on notice that it will no longer be tolerated. It is clear the Convention has enthusiastic support in the internation-

al community, and it is expected that all states will unreservedly endorse this major step to unify and internationalize the fight against drugs and to generate universal action.

I recommend, therefore, that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 20, 1989.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on December 20, 1988. I recommend that the Convention be transmitted to the Senate for its advice and consent to ratification.

The Convention represents a significant development in the effort to combat illicit trafficking in drugs at the international level. Preparation of the Convention began some four years ago, under United Nations auspices, when the international community came to realize that stronger and broader measures for cooperative law enforcement were required to combat the growing menace of illicit trafficking. In 1984, the General Assembly of the United Nations unanimously adopted a resolution endorsing the negotiation of a new multilateral convention to complement the existing international drug control instruments (the 1961 Single Convention on Narcotic Drugs, amended by Protocol in 1972, and the 1971 Convention on Psychotropic Substances). Those two conventions regulate the legal production and distribution of controlled substances but do not provide an adequate legal basis for addressing and controlling the increased threat from illicit drug trafficking across international borders.

A draft convention was initially developed and considered by the UN Commission on Narcotic Drugs, and the resulting revision was reviewed in detail by an intergovernmental group of experts at several sessions during 1987 and early 1988. Based upon the recommendations of that group, the Economic and Social Council of the United Nations decided in May 1988 to convene an international conference of plentipotentiaries to complete the negotiations and to adopt the final version of the convention. That conference took place in Vienna from November 25 to December 20, 1988. The final text of the Convention was adopted by consensus by the 106 States represented at the conference, with 43 States (including the United States) signing the Convention when it was first opened for signature the following day.

The principal purpose of the Convention is to ensure that States adopt and implement effective law enforcement measures to combat illicit traffic in narcotic drugs and psychotropic substances at the national level. The Convention acknowledges that the "illicit traffic is an international criminal activity" and requires States to

establish specific drug-related offenses under their domestic laws, to provide appropriately severe sanctions, to cooperate in the extradition of accused offenders, and to provide each other mutual legal assistance in the investigation and prosecution of those offenses. States party are also obliged to cooperate in a wide range of anti-narcotics activities, including law enforcement and training, crop eradication and demand reduction programs, suppression of illicit trade in precursor chemicals, imposition of controls on use of the mails for trafficking purposes, and the seizure and confiscation of the proceeds from and instrumentalities used in illicit trafficking activities. In addition, States party are required to ensure that commercial carriers are not used for illicit traffic and to suppress illicit traffic in free trade zones and free ports. In many respects, the Convention thus adopts on a multilateral level the same sorts of legal undertakings and cooperative arrangements which the United States and other nations have already developed and implemented on a bilateral basis.

The major provisions of the Convention are as follows:

(1) *Offenses and Sanctions.*—The Convention requires each State party to establish as criminal offenses under its domestic law a comprehensive list of activities involved in or related to international drug trafficking. While such offenses already exist under U.S. law, their adoption by the international community and enactment into the laws of each State party will significantly strengthen the sanctions applicable to international drug trafficking around the globe.

Specifically, the covered offenses include: (i) the production, manufacture, distribution or sale of any narcotic drug or psychotropic substance contrary to the provisions of the 1961 Single Convention or the 1971 Psychotropic Substances Convention; (ii) the cultivation of opium poppy, coca bush or cannabis plant contrary to those earlier Conventions; (iii) the possession or purchase of any narcotic drug or psychotropic substance for the purpose of illicit trafficking; (iv) the intentional manufacture, transport or distribution of materials, equipment and substances for the purpose of illicit cultivation, production or manufacture of narcotic drugs and psychotropic substances; and (v) the organization, management or financing of any of the foregoing offenses. In addition, the Convention specifically requires criminalization of drug-related money laundering, including the conversion and transfer of property derived from an offense as well as the concealment and disguise of its true nature and source.

States party are also required, subject to their constitutional principles and basic concepts of their legal systems, to establish as criminal offenses: (i) the acquisition, possession or use of property knowingly derived from the above offenses; (ii) possession of equipment, materials and chemicals knowingly used in illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; (iii) publicly inciting or inducing others to commit the above listed offenses; and (iv) related offenses of conspiracy, participation, aiding and abetting, etc.

Each State party is obliged to make these covered acts punishable by sanctions which take into account the grave nature of the offenses, such as imprisonment, fines and confiscation. The Conven-

tion requires competent authorities to take into account factual circumstances making the commission of the offenses particularly serious, such as the involvement of organized criminal groups, use of violence, victimization of minors, and the fact that offender holds public office.

Importantly, the Convention provides that the offenses shall not be considered "fiscal offenses", "political offenses" or "regarded as politically motivated" for purposes of its confiscation, extradition and mutual legal assistance articles.

(2) *Jurisdiction.*—States party are obliged to establish jurisdiction over the covered offenses when they are committed in its territory or on board its vessel or aircraft. A State party may establish jurisdiction over offenses committed by its nationals, on board vessels outside its territorial sea which it is properly boarding and searching, and with respect to conspiratorial actions committed outside its territory with a view to commission of a covered offense within its territory.

(3) *Confiscation.*—The Convention requires States party to enact far-reaching domestic laws providing for the "confiscation" (i.e., freezing, seizing and forfeiture) of all forms of property used in or derived from covered offenses, including the proceeds of the offense as well as the narcotic drugs and psychotropic substances, materials and equipment, and other instrumentalities. Parties are required to take the necessary measures to allow their appropriate authorities to identify, trace, seize and freeze property as preliminary steps toward the eventual confiscation of that property.

Importantly, the Convention requires States party to enable their courts or other competent authorities to order the production or seizure of bank, financial and commerical records necessary to trace, identify, seize and forfeit proceeds and instrumentalities of drug trafficking. In this connection, it specifies that Parties shall not decline to act on the grounds of bank secrecy.

In addition, States party are required, upon request, to assist each other by taking measures to identify, trace and freeze or seize proceeds, property, instrumentalities or any other things for the purpose of eventual confiscation either by the requesting Party or its own authorities. In this connection, the Convention establishes a procedure by which one Party may ask another to assist it by forfeiting proceeds or instrumentalities located in the requested Party's territory. Two alternatives are provided, depending on the law in the requested State: an action to enforce the judgment of forfeiture rendered in the requesting State, or initiation of new proceedings in the requested State on the basis of evidence provided by the requesting State. While acknowledging that the disposition of confiscated property and proceeds is a matter of domestic law, the Convention contemplates agreements between the Parties for either contributing the value of confiscated property to intergovernmental bodies specializing in the fight against illicit drug traffic, or sharing the proceeds and property with other Parties on a regular or case-by-case basis.

Where proceeds from illegal activity have been intermingled with property from legitimate sources, the Convention provides for confiscation up to the assessed value of the intermingled proceeds.

However, the Convention seeks to preserve the rights of *bona fide* third parties.

(4) *Extradition.*—The Convention amends existing extradition treaties between States party to include the covered offenses as extraditable offenses and provides that they shall be extraditable offenses between States which do not make extradition conditional on an extradition treaty. While acknowledging that extradition is subject to conditions provided by the law of the requested Party or applicable extradition treaties, the Convention calls upon States party to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of covered offenses. States party also undertake to conclude bilateral and multilateral agreements to enhance the effectiveness of extradition.

In considering extradition requests under the Convention, the requested State may refuse to comply where there are substantial grounds to believe that compliance would facilitate prosecution or punishment of a person on account of his race, religion, nationality or political opinions. However, extradition requests may not be refused under the Convention on the grounds that they involve fiscal or political offenses.

If a State in which an offender is found does not extradite that person because the offense was committed by one of its nationals or in its territory or on its vessel or aircraft, that State is obliged to submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party.

(5) *Mutual Legal Assistance.*—The Convention provides a treaty obligation to provide mutual legal assistance to other States party in investigations, prosecutions or other judicial proceedings in relation to covered offenses. Such assistance includes, *inter alia*, the taking of evidence, service of documents, executing searches and seizures, examining objects and sites, providing bank, financial and business records, and identifying and tracing proceeds and instrumentalities of crime. Other forms of mutual legal assistance may be provided as allowed by the domestic law of the requested Party.

Significantly, the Convention eliminates bank secrecy as a ground for refusing a request for mutual legal assistance.

To the extent necessary, the Convention amends existing mutual legal assistance treaties to apply to offenses covered by the Convention, thereby including money laundering in the context of illegal drug trafficking. As between States which are not parties to bilateral or multilateral treaties on mutual legal assistance, the Convention provides a basis for according such assistance, and specifies the procedures to be followed in making and executing requests. Requests may be refused only for limited specified reasons.

The Convention also provides for the possibility of transfer of criminal proceedings for covered offenses, where such transfer would be in the interests of a proper administration of justice.

(6) *Specific Enforcement Measures.*—The Convention requires States party to undertake other, less formal forms of assistance, cooperation and training to enhance the effectiveness of law enforcement action, such as establishing direct channels of communication between law enforcement authorities, assisting in particular inquiries concerning the identity and whereabouts of suspects, the movement of drugs, proceeds, instrumentalities and property, and moni-

toring the import and export of narcotic drugs and psyhcotropic substances.

Various provisions of the Convention contemplate adoption and use of certain law enforcement measures addressed specifically to illicit trafficking across national boundaries. For example, the Convention calls upon States party to take the necessary measures to allow for the use of controlled deliveries at the international level. In this context, "controlled delivery" describes the known passage of an illicit consignment through a territory in which the authorities elect not to immediately effect an arrest or seizure in order to trace the onward movement of the consignment and to identify higher levels of the trafficking organization. While use of controlled delivery is common in the United States, a number of countries indicated legal impediments to cooperating in such efforts absent a specific treaty obligation.

States party are required to take steps to ensure that means of transport operated by commercial carriers are not used in the commission of covered offenses. Each State party is to require that commercial carriers take precautions to prevent the use of their means of transport for illicit trafficking. In addition, the Convention calls upon States party to adopt measures to suppress the use of the mails for illicit traffic, including through the introduction of investigative and control techniques to detect illicit consignments. States party must also apply suppressive measures in their free trade zones and free ports that are no less stringent than those applied in other parts of their territory; such measures include monitoring the movement of goods and services, establishing systems to detect illicit consignments, and maintain surveillance systems in harbor and dock areas.

With respect to suppressing illicit traffic by sea, the Convention requires Parties to cooperate to the fullest extent possible, in conformity with the international law of the sea. It provides that a Party with reasonable grounds to suspect that a vessel displaying the flag or mark of registry of another Party is engaged in illicit traffic may request the flag State's authorization to take appropriate measures, including boarding and searching the vessel. The Convention provides that the flag State may subject its authorization to mutually agreed conditions, including conditions relating to responsibility.

(7) *Diversion of Chemicals.*—Reflecting international concern over the diversion of legally produced chemicals used in the basic manufacture or to facilitate the processing of illicit controlled substances, the Convention includes provisions for prevention of diversion at the national level and for cooperation among States party at the international level. It includes specific obligations with respect to monitoring suspicious shipments, providing for proper labelling and documentation of shipments, and maintenance of records. The Convention lists, in two Tables, chemicals covered by these provisions.

Separately, States party are required to take appropriate action to prevent trade in and diversion of common materials and equipment used in the illicit manufacture of narcotic drugs and psychotropic substances.

(8) *Eradication and Demand Reduction.*—The Convention obliges each Party to take appropriate measures to prevent the illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannibis plants cultivated illicitly in its territory. In this regard, Parties cannot take measures pursuant to this Convention which are less stringent than those stipulated by the 1961 Single Convention, as amended, and the 1971 Psychotropic Substances Convention. Parties are also obliged to take appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

The Convention calls upon States party to assist and support transit States and, in particular, developing countries in need of such assistance and support through programs of technical co-operation on interdiction and other related activities.

(9) *Supervising Mechanisms.*—The Convention assigns to the International Narcotics Control Board, which was established by the Single Convention, broad supervisory responsibilities in a manner consistent with the oversight role accorded it by the two existing international drug control treaties. Specifically, the Board has oversight with respect to the provisions concerning illicit manufacture of narcotic drugs and psychotropic substances, materials and equipment, commercial documentation and labelling of exports. The Board is required to prepare an annual report concerning the information at its disposal. In addition, the United Nations Commission on Narcotic Drugs is given certain supervisory responsibilities likewise consistent with the oversight role accorded the Commission by the two predecessor Conventions. In particular, the Commission is empowered to review the operation of the Convention, to make suggestions and general recommendations based on the information received from States party, and to take action on matters referred to it by the International Narcotics Control Board.

Article 32 of the Convention, concerning dispute settlement, permits States party to submit disputes to the International Court of Justice in the event that those disputes cannot be settled by other peaceful means of the Parties' choice, including negotiation, mediation, conciliation, and arbitration. It is my recommendation that, at the time of ratification, the United States exercise its right under paragraph 4 of that Article to declare, by means of reservation, that it does not consider itself bound to submit to the compulsory jurisdiction of the Court in respect of disputes arising under this Convention.

The Convention will enter into force ninety days after the date on which twenty States have indicated their intent to be bound by depositing instruments of ratification, acceptance, approval or accession.

Proposed legislation necessary to implement the Convention will be submitted to Congress in the near future.

Respectfully submitted,

R. BARTHOLOMEW.

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Adopted by the Conference at its 6th plenary meeting, on 19 December 1988

The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Deeply concerned also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing also the illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,

Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances,

Determined to improve international co-operation in the suppression of illicit traffic by sea,

Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, co-ordinated action within the framework of international co-operation is necessary,

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desir-

ous that the international organs concerned with such control should be within the framework of that Organization,

Reaffirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody,

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences,

Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic,

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances,

Hereby agree as follows:

ARTICLE 1—DEFINITIONS

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout this Convention:

(a) "Board" means the International Narcotics Control Board established by the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(b) "Cannabis plant" means any plant of the genus Cannabis;

(c) "Coca bush" means the plant of any species of the genus Erythroxylon;

(d) "Commercial carrier" means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire or any other benefit;

(e) "Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;

(f) "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;

(g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention;

(h) "1961 Convention" means the Single Convention on Narcotic Drugs, 1961;

(i) "1961 Convention as amended" means the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(j) "1971 Convention" means the Convention on Psychotropic Substances, 1971;

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

(l) "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;

(m) "Illicit traffic" means the offences set forth in article 3, paragraphs 1 and 2, of this Convention;

(n) "Narcotic drug" means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961;

(o) "Opium poppy" means the plant of the species *Papaver somniferum* L;

(p) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;

(q) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(r) "Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;

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

(t) "Table I" and "Table II" means the correspondingly numbered lists of substances annexed to this Convention, as amended from time to time in accordance with article 12;

(u) "Transit State" means a State through the territory of which illicit narcotic drugs, psychotropic substances and substances in Table I and Table II are being moved, which is neither the place of origin nor the place of ultimate destination thereof.

ARTICLE 2—SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign

equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

ARTICLE 3—OFFENCES AND SANCTIONS

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a)(i) The productions, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

(ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production, or manufacture of narcotic drugs or psychotropic substances;

(v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

(b)(i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;

(c) Subject to its constitutional principles and the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;

(ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

(iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;

(iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

4. (a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other form of deprivation of liberty, pecuniary sanctions and confiscation.

(b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

(c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

(d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as:

(a) The involvement in the offence of an organized criminal group to which the offender belongs;

(b) The involvement of the offender in other international organized criminal activities;

(c) The involvement of the offender in other illegal activities facilitated by commission of the offence;

(d) The use of violence or arms by the offender;

(e) The fact that the offender holds a public office and that the offence is connected with the office in question;

(f) The victimization or use of minors;

(g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;

(h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

7. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within it territory, its present at the necessary criminal proceedings.

10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

ARTICLE 4—JURISDICTION

1. Each Party:

(a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

(i) The offence is committed in its territory;

(ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;

(b) May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

(i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;

(ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;

(iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph (c)(iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1.

2. Each Party:

(a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

(i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed; or

(ii) That the offence has been committed by one of its nationals;

(b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

ARTICLE 5—CONFISCATION

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;

(b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with article 3, paragraph 1.

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

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

4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

(i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

(b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party.

(c) The decisions or actions provided for in subparagraph (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.

(d) The provisions of article 7, paragraphs 6 to 19 are applicable *mutatis mutandis*. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:

(i) In the case of a request pertaining to subparagraph (a)(i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.

(e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

(f) If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.

(g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article.

5. (a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.

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

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;

(ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

(c) Income or other benefits derived from:

(i) Proceeds;

(ii) Property into which proceeds have been transformed or converted; or

(iii) Property with which proceeds have been intermingled

shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

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

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

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

ARTICLE 6—EXTRADITION

1. This article shall apply to the offences established by the Parties in accordance with article 3, paragraph 1.

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

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

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

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. The Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall:

(a) If it does not extradite him in respect of an offence established in accordance with article 3, paragraph 1, on the grounds set forth in article 4, paragraph 2, subparagraph (a), submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party;

(b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 4, paragraph 2, subparagraph (b), submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in con-

formity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

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

12. The Parties may consider entering into bilateral or multilateral agreements, whether *ad hoc* or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

ARTICLE 7—MUTUAL LEGAL ASSISTANCE

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1.

2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures;

(d) Examining objects and sites;

(e) Providing information and evidentiary items;

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

(g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

3. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

4. Upon request, the Parties shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

5. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

7. Paragraphs 8 to 19 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 8 to 19 of this article in lieu thereof.

8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authori-

ties designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

(c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought.

11. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

13. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

14. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

15. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested

with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

16. Reasons shall be given for any refusal of mutual legal assistance.

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

18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

20. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

ARTICLE 8—TRANSFER OF PROCEEDINGS

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice.

ARTICLE 9—OTHER FORMS OF CO-OPERATION AND TRAINING

1. The Parties shall co-operate closely with one another, consistent with their respective domestic legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with article 3, paragraph 1. They shall, in particular,

on the basis of bilateral or multilateral agreements or arrangements:

(a) Establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 3, paragraph 1, including, if the Parties concerned deem it appropriate, links with other criminal activities;

(b) Co-operate with one another in conducting enquiries, with respect to offences established in accordance with article 3, paragraph 1, having an international character, concerning:

(i) The identity, whereabouts and activities of persons suspected of being involved in offences established in accordance with article 3, paragraph 1;

(ii) The movement of proceeds or property derived from the commission of such offences;

(iii) The movement of narcotic drugs, psychotropic substances, substances in Table I and Table II of this Convention and instrumentalities used or intended for use in the commission of such offences;

(c) In appropriate cases and if not contrary to domestic law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected;

(d) Provide, when appropriate, necessary quantities of substances for analytical or investigative purposes;

(e) Facilitate effective co-ordination between their competent agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers.

2. Each Party shall, to the extent necessary, initiate, develop or improve a specific training programmes for its law enforcement and other personnel, including customs, charged with the suppression of offences established in accordance with article 3, paragraph 1. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection and suppression of offences established in accordance with article 3, paragraph 1;

(b) Routes and techniques used by persons suspected of being involved in offences established in accordance with article 3, paragraph 1, particularly in transit States, and appropriate countermeasures;

(c) Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in Table I and Table II;

(d) Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in Table I and Table II, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 3, paragraph 1;

(e) Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;

(f) Collection of evidence;
(g) Control techniques in free trade zones and free ports;
(h) Modern law enforcement techniques.

3. The Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote co-operation and stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

ARTICLE 10—INTERNATIONAL CO-OPERATION AND ASSISTANCE FOR TRANSIT STATES

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 interdiction and other related activities.

2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard.

ARTICLE 11—CONTROLLED DELIVERY

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

ARTICLE 12—SUBSTANCES FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall co-operate with one another to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

(a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;

(b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States and other entities which are, or which are entitled to become, Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party one hundred and eighty days after the date of such communication.

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

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

(c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States and other entities which are, or which are entitled to become, Parties to this Convention, to the Commission and to the Board.

8. (a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table II which are carried out within their territory.

(b) To this end, the Parties may:

(i) Control all persons and enterprises engaged in the manufacture and distribution of such substances;

(ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;

(iii) Require that licensees obtain a permit for conducting the aforesaid operations;

(iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.

9. Each Party shall, with respect to substances in Table I and Table II, take the following measures:

(a) Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close co-operation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions;

(b) Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance;

(c) Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief;

(d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or exported, and the name and address of the exporter, the importer and, when available, the consignee;

(e) Ensure that documents referred to in subparagraph (d) of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

10. (a) In addition to the provisions of paragaph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:

(i) Name and address of the exporter and importer and, when available, the consignee;

(ii) Name of the substance in Table I;

(iii) Quantity of the substance to be exported;

(iv) Expected point of entry and expected date of dispatch;

(v) Any other information which is mutually agreed upon by the Parties.

(b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.

11. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10 of this article, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.

12. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:

(a) The amounts seized of substances in Table I and Table II and, when known, their origin;

(b) Any substance not included in Table I or Table II which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;

(c) Methods of diversion and illicit manufacture.

13. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Table I and Table II.

14. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

ARTICLE 13—MATERIALS AND EQUIPMENT

The Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.

ARTICLE 14—MEASURES TO ERADICATE ILLICIT CULTIVATION OF NARCOTIC PLANTS AND TO ELIMINATE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and

psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. (a) The Parties may co-operate to increase the effectiveness of eradication efforts. Such co-operation may, *inter alia,* include support, when appropriate, for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. The Parties may agree on any other appropriate measures of co-operation.

(b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

(c) Whenever they have common frontiers, the Parties shall seek to co-operate in eradication programmes in their respective areas along those frontiers.

4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, *inter alia,* on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations, and on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1987, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. The Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances.

ARTICLE 15—COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3, paragraph 1; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences established in accordance with article 3, paragraph 1. Such precautions may include:

(a) If the principal place of business of a commercial carrier is within the territory of the Party:

(i) Training of personnel to identify suspicious consignments or persons;

(ii) Promotion of integrity of personnel;

(b) If a commercial carrier is operating within the territory of the Party:

(i) Submission of cargo manifests in advance, whenever possible;

(ii) Use of tamper-resistent, individually verifiable seals on containers;

(iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious circumstances that may be related to the commission of offences established in accordance with article 3, paragraph 1.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo and to implementing approrpriate security measures.

ARTICLE 16—COMMERCIAL DOCUMENTS AND LABELLING OF EXPORTS

1. Each Party shall require that lawful exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the 1961 Convention, article 31 of the 1961 Convention as amended and article 12 of the 1971 Convention, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as set out in the respective Schedules of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the quantity being exported, and the name and address of the exporter, the importer and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabelled.

ARTICLE 17—ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another

Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, *inter alia*:

(a) Board the vessel;

(b) Search the vessel;

(c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.

6. The flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

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

10. Action pursuant to paragraph 4 of this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.

ARTICLE 18—FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

(a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower the competent authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to search crew members, passengers and their baggage;

(b) To establish and maintain a system to detect consignments suspected of containing narcotic drugs, psychotropic substances and substances in Table I and Table II passing into or out of free trade zones and free ports;

(c) To establish and maintain surveillance systems in harbour and dock areas and at airports and border control points in free trade zones and free ports.

ARTICLE 19—THE USE OF THE MAILS

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of their domestic legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall cooperate with one another to that end.

2. The measures referred to in paragraph 1 of this article shall include, in particular:

(a) Co-ordinated action for the prevention and repression of the use of the mails for illicit traffic;

(b) Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Table I and Table II in the mails;

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

ARTICLE 20—INFORMATION TO BE FURNISHED BY THE PARTIES

1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of this Convention in their territories and, in particular:

(a) The text of laws and regulations promulgated in order to give effect to the Convention;

(b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by persons so engaged.

2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

ARTICLE 21—FUNCTIONS OF THE COMMISSION

The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular:

(a) The Commission shall, on the basis of the information submitted by the Parties in accordance with article 20, review the operation of this Convention;

(b) The Commission may make suggestions and general recommendations based on the examination of the information received from the Parties;

(c) The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board;

(d) The Commission shall, on any matter referred to it by the Board under article 22, paragraph 1(b), take such action as it deems appropriate;

(e) The Commission may, in conformity with the procedures laid down in article 12, amend Table I and Table II;

(f) The Commission may draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

ARTICLE 22—FUNCTIONS OF THE BOARD

1. Without prejudice to the functions of the Commission under article 21, and without prejudice to the functions of the Board and the Commission under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention:

(a) If, on the basis of its examination of information available to it, to the Secretary-General or to the Commission, or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to furnish any relevant information;

(b) With respect to articles 12, 13 and 15:

(i) After taking action under subparagraph (a) of this article, the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 12, 13 and 16;

(ii) Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;

(iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

2. Any Party shall be invited to be represented at a meeting of the Board at which a question of direct interest to it is to be considered under this article.

3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

5. In carrying out its functions pursuant to subparagraph 1(a) of this article, the Board shall ensure the confidentiality of all information which may come into its possession.

6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between Parties in accordance with the provisions of this Convention.

7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 32.

ARTICLE 23—REPORTS OF THE BOARD

1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal and, in appropriate cases, an account of the explanations, if any, given by or required of Parties, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

ARTICLE 24—APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.

ARTICLE 25—NON-DEROGATION FROM EARLIER TREATY RIGHTS AND OBLIGATIONS

The provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

ARTICLE 26—SIGNATURE

This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

(a) All States;

(b) Namibia, represented by the United Nations Council for Namibia;

(c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

ARTICLE 27—RATIFICATION, ACCEPTANCE, APPROVAL OR ACT OF FORMAL CONFIRMATION

1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 26, subparagraph (c). The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.

2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

ARTICLE 28—ACCESSION

1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 26, subparagraph (c). Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

ARTICLE 29—ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to this Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. For each regional economic integration organization referred to in article 26, subparagraph (c) depositing an instrument relating to an act of formal confirmation or an instrument of accession, this Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

ARTICLE 30—DENUNCIATION

1. A Party may denounce this Convention at any time by a written notification addressed to the Secretary-General.

2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

ARTICLE 31—AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that Party to the Secretary-General, who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to have been accepted and shall enter into force in respect of a Party ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment.

2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with Article 62, paragraph 4, of the Charter of the United Nations. Any amendment resulting from such a conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General.

ARTICLE 32—SETTLEMENT OF DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph (c) is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of a signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any Party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

ARTICLE 33—AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

ARTICLE 34—DEPOSITARY

The Secretary-General shall be the depositary of this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE AT VIENNA, in one original, this twentieth day of December, one thousand nine hundred and eighty-eight.

ANNEX

Table I

Ephedrine
Ergometrine
Ergotamine
Lysergic acid
1-phenyl-2-propanone
Pseudoephedrine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

Table II

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Phenylacetic acid
Piperidine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

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101ST CONGRESS
1st Session

SENATE

TREATY DOC.
101-5

TAX CONVENTION WITH THE REPUBLIC OF INDIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED PROTOCOL, SIGNED AT NEW DELHI ON SEPTEMBER 12, 1989



OCTOBER 31, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

39-118 WASHINGTON : 1989

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 24, 1989.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, signed at New Delhi on September 12, 1989.

The Convention would be the first tax treaty between the United States and India. In general, it follows the pattern of the United States model tax convention but differs in a number of respects to reflect India's status as a developing country.

The Convention provides maximum rates of tax at source on payments of dividends, interest and royalties which, in each case, are higher than the rates specified in the United States Model. Dividends from a subsidiary to a parent corporation are taxable at a maximum rate of 15 percent; other dividends may be taxable at source at a 25 percent rate. Interest is, in general, taxable at source at a maximum rate of 15 percent, although interest received by a financial institution is taxable at a maximum rate of 10 percent, and interest received by either of the two Governments, by certain governmental financial institutions, and by residents of a Contracting State on certain Government approved loans, is exempt from tax at source.

The royalty provisions contain several significant departures from standard United States tax treaty policy. In general, industrial and copyright royalties are taxable at source at a maximum rate of 20 percent for the first five years, dropping to 15 percent thereafter. Where the payor of the royalty is one of the Governments, a political subdivision or a public sector corporation, tax will be imposed from the date of entry into force of the treaty at a maximum rate of 15 percent. Payments for the use of, or the right to use, industrial, commercial or scientific equipment are treated as royalties, rather than as business profits, and are subject to a maximum rate of tax at source of 10 percent. The most significant departure from past policy in the royalty article is the fact that certain service fees, referred to in the Convention as "fees for included services", are treated in the same manner as royalties, and not, as would normally be the case, as business profits. Included services are defined as technical consultancy services which either: (i) are

ancillary and subsidiary to the licensing of an intangible or the rental of tangible personal property, both of which give rise to royalty payments, or, (ii) if not ancillary or subsidiary, make available to the payor of the service fee some technical knowledge, experience, skill, etc., or transfer to that person a technical plan or design. A detailed memorandum of understanding was developed by the negotiators to provide guidance as to the intended scope of the concept of "included services" and the effect of the memorandum is agreed to in an exchange of notes. These are included for information only. Fees for all other services are treated either as business profits or as independent personal services income. Although not reflected in the convention, under Indian law, certain service fees related to defense contracts are exempt from Indian tax.

The Convention preserves for the United States the right to impose the branch profits tax. It preserves for both Contracting States their statutory taxing rights with respect to capital gains.

The Convention also contains rules for the taxation of business profits which, consistent with other United States tax treaties with developing countries, provide a broader range of circumstances under which one partner may tax the business profits of a resident of the other. The Convention defines permanent establishment to include a construction site or a drilling rig where the site or activity continues for a period of 120 days in a year. This compares with a twelve-month threshold under the United States Model, and six months under the typical developing country tax treaty. In addition, the Convention contains reciprocal exemption at source for shipping and aircraft operating income, including income from the incidental leasing of ships, aircraft or containers (i.e., where the lessor is an operator of ships and aircraft). The Convention differs from the United States Model in that income from the non-incidental leasing of ships, aircraft or containers (i.e., where the lessor is not an operator of ships or aircraft) is not covered by the article. Income from such non-incidental leasing is treated as a royalty, taxable at source at a maximum rate of 10 percent.

The treatment under the Convention of various classes of personal service income is similar to that under the United States tax treaties with developing countries.

The Convention contains provisions designed to prevent third-country residents from treaty shopping, i.e., from taking unwarranted advantage of the Convention by routing income from one Contracting State through an entity created in the other. These provisions consistent with recent tax legislation, identify treaty shopping in terms both of third-country ownership of an entity, and of the substantial use of the entity's income to meet liabilities to third-country persons. Notwithstanding the presence of these factors, however, treaty benefits will be allowed if the income is incidental to or earned in connection with the active conduct of a trade or business in the State of residence, if the shares of the company earning the income are traded on a recognized stock exchange, or if the competent authority of the source State so determines.

As with all United States tax treaties, the Convention prohibits tax discrimination, creates a dispute resolution mechanism and

provides for the exchange of otherwise confidential tax information between the tax authorities of the parties. The Convention authorizes access by the General Accounting Office and the tax writing committees of Congress to certain information exchanged under the Convention which is relevant to the functions of these bodies in overseeing the administration of United States laws.

In an exchange of notes, the United States and India agree that, although the Convention does not contain a tax sparing credit, if United States policy changes in this regard, the Convention will be promptly amended to incorporate a tax sparing provision. These notes are also included for information only.

A technical memorandum explaining in detail the provisions of the Convention and the related Protocol is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention and related Protocol.

Respectfully submitted,

JAMES A. BAKER III.

Enclosures: As stated.

EMBASSY OF THE UNITED STATES OF AMERICA,
New Delhi, September 12, 1989.

His Excellency, DR. N.K. SENGUPTA,
Secretary (Revenue),
Ministry of Finance, New Delhi.

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was signed today (hereinafter referred to as "the Convention") and to confirm, on behalf of the Government of the United States of America, the following understandings reached between the two Governments:

Both sides agree that a tax sparing credit shall not be provided in Article 25 (Relief from Double Taxation) of the Convention at this time. However, the Convention shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country.

Both sides also agree that, for purposes of paragraph 4(c) of Article 5 (Permanent Establishment) of the Convention, a person shall be considered to habitually secure orders in a Contracting State, wholly or almost wholly for an enterprise, only if:

1. such person frequently accepts orders for goods or merchandise on behalf of the enterprise;

2. substantially all of such person's sales-related activities in the Contracting State consist of activities for the enterprise;

3. such person habitually repesents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply

goods or merchandise under the terms and conditions specified in the order; and

4. the enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise.

I have the honor to request Your Excellency to confirm the foregoing understandings of Your Excellency's Government.

Accept, Excellency, the renewed assurances of my highest consideration.

JOHN R. HUBBARD,
Ambassador.

GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
New Delhi, September 12, 1989.

His Excellency, Dr. JOHN R. HUBBARD,
Ambassador of the United States of America,
New Delhi.

EXCELLENCY: I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was signed today (hereinafter referred to as "the Convention") and to confirm, on behalf of the Government of the United States of America, the following understanding reached between the two Governments:

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Both sides also agree that, for purposes of paragraph 4(c) of Article 5 (Permanent Establishment) of the Convention, a person shall be considered to habitually secure orders in a Contracting State, wholly or almost wholly for an enterprise, only if:

1. such person frequently accepts orders for goods or merchandise on behalf of the enterprise;

2. substantially all of such person's sales-related activities in the Contracting State consist of activities for the enterprise;

3. such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order; and

4. the enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise."

I have the honour to confirm the understandings contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

Accept, Excellency, the renewed assurances of my highest consideration.

N.K. SENGUPTA,
Secretary.

EMBASSY OF THE UNITED STATES OF AMERICA,
New Delhi, September 12, 1989.

His Excellency, Dr. N.K. SENGUPTA,
Secretary (Revenue),
Ministry of Finance, New Delhi.

EXCELLENCY: I have the honor to refer to the Convention signed today between the United States of America and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and to inform you on behalf of the United States of America of the following:

During the course of the negotiations leading to conclusion of the Convention signed today, the negotiators developed and agreed upon a memorandum of understanding intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting aspects of Article 12 (Royalties and Fees for Included Services) relating to the scope of included services. This memorandum of understanding represents the current views of the United States Government with respect to these aspects of Article 12, and it is my Government's understanding that it also represents the current views of the Indian Government. It is also my Government's view that as our Governments gain experience in administering the Convention, and particularly Article 12, the competent authorities may develop and publish amendments to the memorandum of understanding and further understandings and interpretations of the Convention.

If this position meets with the approval of the Government of the Republic of India, this letter and your reply thereto will indicate that our Governments share a common view of the purpose of the memorandum of understanding relating to Article 12 of the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

JOHN R. HUBBARD,
Ambassador.

GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
New Delhi, September 12, 1989.

His Excellency, Dr. JOHN R. HUBBARD,
Ambassador of the United States of America,
New Delhi.

EXCELLENCY: I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honor to refer to the Convention signed today between the United States of America and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and to inform you on behalf of the United States of America of the following:

During the course of the negotiations leading to conclusion of the Convention signed today, the negotiators developed and agreed upon a memorandum of understanding intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting aspects of Article 12 (Royalties and Fees for Included Services) relating to the scope of included services. This memorandum of understanding represents the current views of the United States Government with respect to these aspects of Article 12, and it is my Government's understanding that it also represents the current views of the Indian Government. It is also my Government's view that as our Governments gain experience in administering the Convention, and particularly Article 12, the competent authorities may develop and publish amendments to the memorandum of understanding and further understandings and interpretations of the Convention.

If this position meets with the approval of the Government of the Republic of India, this letter and your reply thereto will indicate that our Governments share a common view of the purpose of the memorandum of understanding relating to Article 12 of the Convention."

I have the honour to confirm the understandings contained in Your Excellency's Note, on behalf of the Government of the Republic of India.

Accept, Excellency, the renewed assurances of my highest consideration.

N.K. SENGUPTA,
Secretary.

MAY 15, 1989.

U.S.-INDIA TAX TREATY

MEMORANDUM OF UNDERSTANDING CONCERNING FEES FOR INCLUDED SERVICES IN ARTICLE 12

Paragraph 4 (in general)

This memorandum describes in some detail the category of services defined in paragraph 4 of Article 12 (Royalties and Fees for Included Services). It also provides examples of services intended to be covered within the definition of included services and those intended to be excluded, either because they do not satisfy the tests of paragraph 4, or because, notwithstanding the fact that they meet the tests of paragraph 4, they are dealt with under paragraph 5. The examples in either case are not intended as an exhaustive list but rather as illustrating a few typical cases. For ease of understanding, the examples in this memorandum describe U.S. persons providing services to Indian persons, but the rules of Article 12 are reciprocal in application.

Article 12 includes only certain technical and consultancy services. By technical services, we mean in this context services requir-

ing expertise in a technology. By consultancy services, we mean in this context advisory services. The categories of technical and consultancy services are to some extent overlapping because a consultancy service could also be a technical service. However, the category of consultancy services also includes an advisory service, whether or not expertise in a technology is required to perform it.

Under paragraph 4, technical and consultancy services are considered included services only to the following extent: (1) as described in paragraph 4(a), if they are ancillary and subsidiary to the application or enjoyment of a right, property or information for which a royalty payment is made; or (2) as described in paragraph 4(b), if they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. Thus, under paragraph 4(b), consultancy services which are not of a technical nature cannot be included services.

Paragraph 4(a)

Paragraph 4(a) of Article 12 refers to technical or consultancy services that are ancillary and subsidiary to the application or enjoyment of any right, property, or information for which a payment described in paragraph 3(a) or (b) is received. Thus, paragraph 4(a) includes technical and consultancy services that are ancillary and subsidiary to the application or enjoyment of an intangible for which a royalty is received under a license or sale as described in paragraph 3(a), as well as those ancillary and subsidiary to the application or enjoyment of industrial, commercial, or scientific equipment for which a royalty is received under a lease as described in paragraph 3(b).

It is understood that, in order for a service fee to be considered "ancillary and subsidiary" to the application or enjoyment of some right, property, or information for which a payment described in paragraph 3(a) or (b) is received, the service must be related to the application or enjoyment of the right, property, or information. In addition, the clearly predominant purpose of the arrangement under which the payment of the service fee and such other payment are made must be the application or enjoyment of the right, property, or information described in paragraph 3. The question of whether the service is related to the application or enjoyment of the right, property, or information described in paragraph 3 and whether the clearly predominant purpose of the arrangement is such application or enjoyment must be determined by reference to the facts and circumstances of each case. Factors which may be relevant to such determination (although not necessarily controlling) include:

1. the extent to which the services in question facilitate the effective application or enjoyment of the right, property, or information described in paragraph 3;

2. the extent to which such services are customarily provided in the ordinary course of business arrangements involving royalties described in paragraph 3;

3. whether the amount paid for the services (or which would be paid by parties operating at arm's length) is an insubstan-

tial portion of the combined payments for the services and the right, property, or information described in paragraph 3;

4. whether the payment made for the services and the royalty described in paragraph 3 are made under a single contract (or a set of related contracts); and

5. whether the person performing the services is the same person as, or a related person to, the person receiving the royalties described in paragraph 3 (for this purpose, persons are considered related if their relationship is described in Article 9 (Associated Enterprises) or if the person providing the service is doing so in connection with an overall arrangement which includes the payor and recipient of the royalties).

To the extent that services are not considered ancillary and subsidiary to the application or enjoyment of some right, property, or information for which a royalty payment under paragraph 3 is made, such services shall be considered "included services" only to the extent that they are described in paragraph 4(b).

Example (1)

Facts: A U.S. manufacturer grants rights to an Indian company to use manufacturing processes in which the transferor has exclusive rights by virtue of process patents or the protection otherwise extended by law to the owner of a process. As part of the contractual arrangement, the U.S. manufacturer agrees to provide certain consultancy services to the Indian company in order to improve the effectiveness of the latter's use of the processes. Such services include, for example, the provision of information and advice on sources of supply for materials needed in the manufacturing process, and on the development of sales and service literature for the manufactured product. The payments allocable to such services do not form a substantial part of the total consideration payable under the contractual arrangement. Are the payments for these services fees for "included services"?

Analysis: The payments are fees for included services. The services described in this example are ancillary and subsidiary to the use of a manufacturing process protected by law as described in paragraph 3(a) of Article 12 because the services are related to the application or enjoyment of the intangible and the granting of the right to use the intangible is the clearly predominant purpose of the arrangement. Because the services are ancillary and subsidiary to the use of the manufacturing process, the fees for these services are considered fees for included services under paragraph 4(a) of Article 12, regardless of whether the services are described in paragraph 4(b).

Example (2)

Facts: An Indian manufacturing company produces a product that must be manufactured under sterile conditions using machinery that must be kept completely free of bacterial or other harmful deposits. A U.S. company has developed a special cleaning process for removing such deposits from that type of machinery. The U.S. company enters into a contract with the Indian company under which the former will clean the latter's machinery on a regular basis. As part of the arrangement, the U.S. company leases to the

Indian company a piece of equipment which allows the Indian company to measure the level of bacterial deposits on its machinery in order for it to know when cleaning is required. Are the payments for the services fees for included services?

Analysis: In this example, the provision of cleaning services by the U.S. company and the rental of the monitoring equipment are related to each other. However, the clearly predominant purpose of the arrangement is the provision of cleaning services. Thus, although the cleaning services might be considered technical services, they are not "ancillary and subsidiary" to the rental of the monitoring equipment. Accordingly, the cleaning services are not "included services" within the meaning of paragraph 4(a).

Paragraph 4(b)

Paragraph 4(b) of Article 12 refers to technical or consultancy services that make available to the person acquiring the service technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design to such person. (For this purpose, the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person.) This category is narrower than the category described in paragraph 4(a) because it excludes any service that does not make technology available to the person acquiring the service. Generally speaking, technology will be considered "made available" when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not *per se* mean that technical knowledge, skills, etc. are made available to the person purchasing the service, within the meaning of paragraph 4(b). Similarly, the use of a product which embodies technology shall not *per se* be considered to make the technology available.

Typical categories of services that generally involve either the development and transfer of technical plans or technical designs, or making technology available as described in paragraph 4(b), include:

1. engineering services (including the subcategories of bioengineering and aeronautical, agricultural, ceramics, chemical, civil, electrical, mechanical, metallurgical, and industrial engineering);
2. architectural services; and
3. computer software development.

Under paragraph 4(b), technical and consultancy services could make technology available in a variety of settings, activities and industries. Such services may, for example, relate to any of the following areas:

1. bio-technical services;
2. food processing;
3. environmental and ecological services;
4. communication through satellite or otherwise;
5. energy conservation;
6. exploration or exploitation of mineral oil or natural gas;
7. geological surveys;
8. scientific services; and

9. technical training.

The following examples indicate the scope of the conditions in paragraph 4(b):

Example (3)

Facts: A U.S. manufacturer has experience in the use of a process for manufacturing wallboard for interior walls of houses which is more durable than the standard products of its type. An Indian builder wishes to produce this product for its own use. It rents a plant and contracts with the U.S. company to send experts to India to show engineers in the Indian company how to produce the extra-strong wallboard. The U.S. contractors work with the technicians in the Indian firm for a few months. Are the payments to the U.S. firm considered to be payments for "included services"?

Analysis: The payments would be fees for included services. The services are of a technical or consultancy nature; in the example, they have elements of both types of services. The services make available to the Indian company technical knowledge, skill, and processes.

Example (4)

Facts: A U.S. manufacturer operates a wallboard fabrication plant outside India. An Indian builder hires the U.S. company to produce wallboard at that plant for a fee. The Indian company provides the raw materials, and the U.S. manufacturer fabricates the wallboard in its plant, using advanced technology. Are the fees in this example payments for included services?

Analysis: The fees would not be for included services. Although the U.S. company is clearly performing a technical service, no technical knowledge, skill, etc., are made available to the Indian company, nor is there any development and transfer of a technical plan or design. The U.S. company is merely performing a contract manufacturing service.

Example (5)

Facts: An Indian firm owns inventory control software for use in its chain of retail outlets throughout India. It expands its sales operation by employing a team of travelling salesmen to travel around the countryside selling the company's wares. The company wants to modify its software to permit the salesmen to access the company's central computers for information on what products are available in inventory and when they can be delivered. The Indian firm hires a U.S. computer programming firm to modify its software for this purpose. Are the fees which the Indian firm pays treated as fees for included services?

Analysis: The fees are for included services. The U.S. company clearly performs a technical service for the Indian company, and it transfers to the Indian company the technical plan (i.e., the computer program) which it has developed.

Example (6)

Facts: An Indian vegetable oil manufacturing company wants to produce a cholesterol-free oil from a plant which produces oil normally containing cholesterol. An American company has developed

a process for refining the cholesterol out of the oil. The Indian company contracts with the U.S. company to modify the formulas which it uses so as to eliminate the cholesterol, and to train the employees of the Indian company in applying the new formulas. Are the fees paid by the Indian company for included services?

Analysis: The fees are for included services. The services are technical, and the technical knowledge is made available to the Indian company.

Example (7)

Facts: The Indian vegetable oil manufacturing firm has mastered the science of producing cholesterol-free oil and wishes to market the product world-wide. It hires an American marketing consulting firm to do a computer simulation of the world market for such oil and to advise it on marketing strategies. Are the fees paid to the U.S. company for included services?

Analysis: The fees would not be for included services. The American company is providing a consultancy service which involves the use of substantial technical skill and expertise. It is not, however, making available to the Indian company any technical experience, knowledge or skill, etc., nor is it transferring a technical plan or design. What is transferred to the Indian company through the service contract is commercial information. The fact that technical skills were required by the performer of the service in order to perform the commercial information service does not make the service a technical service within the meaning of paragraph 4(b).

Paragraph 5

Paragraph 5 of Article 12 describes several categories of services which are not intended to be treated as included services even if they satisfy the tests of paragraph 4. Set forth below are examples of cases where fees would be included under paragraph 4, but are excluded because of the conditions of paragraph 5.

Example (8)

Facts: An Indian company purchases a computer from a U.S. computer manufacturer. As part of the purchase agreement, the manufacturer agrees to assist the Indian company in setting up the computer and installing the operating system, and to ensure that the staff of the Indian company is able to operate the computer. Also, as part of the purchase agreement, the seller agrees to provide, for a period of ten years, any updates to the operating system and any training necessary to apply the update. Both of these service elements to the contract would qualify under paragraph 4(b) as an included service. Would either or both be excluded from the category of included services, under paragraph 5(a), because they are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the computer?

Analysis: The installation assistance and initial training are ancillary and subsidiary to the sale of the computer, and they are also inextricably and essentially linked to the sale. The computer would be of little value to the Indian purchaser without these services, which are most readily and usefully provided by the seller. The fees for installation assistance and initial training, therefore,

are not fees for included services, since these services are not the predominant purpose of the arrangement.

The services of updating the operating system and providing associated necessary training may well be ancillary and subsidiary to the sale of the computer, but they are not inextricably and essentially linked to the sale. Without the upgrades, the computer will continue to operate as it did when purchased, and will continue to accomplish the same functions. Acquiring the updates cannot, therefore, be said to be inextricably and essentially linked to the sale of the computer.

Example (9)

Facts: An Indian hospital purchases an X-ray machine from a U.S. manufacturer. As part of the purchase agreement, the manufacturer agrees to install the machine, to perform an initial inspection of the machine in India, to train hospital staff in the use of the machine, and to service the machine periodically during the usual warranty period (2 years). Under an optional service contract purchased by the hospital, the manufacturer also agrees to perform certain other services throughout the life of the machine, including periodic inspections and repair services, advising the hospital about developments in X-ray film or techniques which could improve the effectiveness of the machine, and training hospital staff in the application of those new developments. The cost of the initial installation, inspection, training, and warranty service is relatively minor as compared with the cost of the X-ray machine. Is any of the service described here ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the X-ray machine?

Analysis: The initial installation, inspection, and training services in India and the periodic service during the warranty period are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of the X-ray machine because the usefulness of the machine to the hospital depends on this service, the manufacturer has full responsibility during this period, and the cost of the services is a relatively minor component of the contract. Therefore, under paragraph 5(a) these fees are not fees for included services, regardless of whether they otherwise would fall within paragraph 4(b).

Neither the post-warranty period inspection and repair services, nor the advisory and training services relating to new developments are "inextricably and essentially linked" to the initial purchase of the X-ray machine. Accordingly, fees for these services may be treated as fees for included services if they meet the tests of paragraph 4(b).

Example (10)

Facts: An Indian automobile manufacturer decides to expand into the manufacture of helicopters. It sends a group of engineers from its design staff to a course of study conducted by the Massachusetts Institute of Technology (MIT) for two years to study aeronautical engineering. The Indian firm pays tuition fees to MIT on behalf of the firm's employees. Is the tuition fee a fee for an included service within the meaning of Article 12?

Analysis: The tuition fee is clearly intended to acquire a technical service for the firm. However, the fee paid is for teaching by an educational institution, and is, therefore, under paragraph 5(c), not an included service. It is irrelevant for this purpose whether MIT conducts the course on its campus or at some other location.

Example (11)

Facts: As in Example (10), the automobile manufacturer wishes to expand into the manufacture of helicopters. It approaches an Indian university about establishing a course of study in aeronautical engineering. The university contracts with a U.S. helicopter manufacturer to send an engineer to be a visiting professor of aeronautical engineering on its faculty for a year. Are the amounts paid by the university for these teaching services fees for included services?

Analysis: The fees are for teaching in an educational institution. As such, pursuant to paragraph 5(c), they are not fees for included services.

Example (12)

Facts: An Indian wishes to install a computerized system in his home to control lighting, heating and air conditioning, a stereo sound system and a burglar and fire alarm system. He hires an American electrical engineering firm to design the necessary wiring system, adapt standard software, and provide instructions for installation. Are the fees paid to the American firm by the Indian individual fees for included services?

Analysis: The services in respect of which the fees are paid are of the type which would generally be treated as fees for included services under paragraph 4(b). However, because the services are for the personal use of the individual making the payment, under paragraph 5(d) the payments would not be fees for included services.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *October 31, 1989.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, signed at New Delhi on September 12, 1989. I also transmit the report of the Department of State on the convention.

The convention would be the first tax treaty between the United States and India. It includes special provisions that take into account India's status as a developing nation and that reflect changes in U.S. tax treaty policy resulting from the Tax Reform Act of 1986.

Of particular importance are the provisions limiting the withholding tax rates on various categories of investment income, as well as those designed to prevent third-country residents from taking unwarranted advantage of the convention by routing income from one Contracting State through an entity created in the other. The convention also provides for the exchange of information by the competent authorities of the Contracting States.

I recommend the Senate give early and favorable consideration to the convention, together with a related protocol, and give its advice and consent to ratification.

GEORGE BUSH.

Convention Between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income

The Government of the United States of America and the Government of the Republic of India, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of either Contracting State; or

(b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

4. The provisions of paragraph 3 shall not affect

(a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 2 and 6 of Article 20 (Private Pensions, Annuities, Alimony, and Child Support), and under Articles 25 (Relief From Double Taxation), 26 (Non-Discrimination), and 27 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 19 (Remuneration and Pensions in Respect of Government Service), 21 (Payments Received by Students and Apprentices), 22 (Payments Received by Professors, Teachers and Research Scholars) and 29 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

(a) in the United States, the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as "United States tax"); provided, however, the Convention shall apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to exemption from such taxes under this or any other Convention which applies to these taxes; and

(b) in India:

(i) the income tax including any surcharge thereon, but excluding income tax on undistributed income of companies, imposed under the Income-tax Act; and

(ii) the surtax (hereinafter referred to as "Indian tax").

Taxes referred to in (a) and (b) above shall not include any amount payable in respect of any default or omission in relation to the above taxes or which represent a penalty imposed relating to those taxes.

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention.

ARTICLE 3

General Definitions

1. In this Convention, unless the context otherwise requires:

(a) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law;

(b) the term "United States", when used in a geographical sense means all the territory of the United States of America, including its territorial sea, in which the laws relating to United States tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which the United States has jurisdiction in accordance with international law and in which the laws relating to United States tax are in force;

(c) the terms "a Contracting State" and "the other Contracting State" mean India or the United States as the context requires;

(d) the term "tax" means Indian tax or United States tax, as the context requires;

(e) the term "person" includes an individual, an estate, a trust, a partnership, a company, any other body of persons, or other taxable entity;

(f) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "competent authority" means, in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative, and in the case of the United States, the Secretary of the Treasury or his delegate;

(i) the term "national" means any individual possessing the nationality or citizenship of a Contracting State;

(j) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places within the other Contracting State;

(k) the term "taxable year" in relation to Indian Tax means "previous year" as defined in the Income-tax Act, 1961.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 27 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and

(b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of paragraph 1, a company is a resident of both Contracting States, such company shall be considered to be outside the scope of this Convention except for purposes of paragraph 2 of Article 10 (Dividends), Article 26 (Non-Discrimination), Article 27 (Mutual Agreement Procedure), Article 28 (Exchange of Information and Administrative Assistance) and Article 30 (Entry Into Force).

4. Where, by reason of the provisions of paragraph 1, a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources;

(g) a warehouse, in relation to a person providing storage facilities for others;

(h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;

(i) a store or premises used as a sales outlet;

(j) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 120 days in any twelve month period;

(k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites,

projects or activities, if any) continue for a period of more than 120 days in any twelve month period;

(l) the furnishing of services, other than included services as defined in Article 12 (Royalties and Fees for Included Services), within a Contracting State by an enterprise through employees or other personnel, but only if:

(i) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve-month period; or

(ii) the services are performed within that State for a related enterprise (within the meaning of paragraph 1 of Article 9 (Associated Enterprises)).

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include any one or more of the following:

(a) the use of facilities solely for the purpose of storage, display, or occasional delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or occasional delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for other activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 5 applies—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State if:

(a) he has an habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph;

(b) he has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, and some additional activities conducted in that State on behalf of the enterprise have contributed to the sale of the goods or merchandise; or

(c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a

broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arm's-length conditions, he shall not be considered an agent of independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Immovable Property (Real Property)

1. Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or c) other business activities carried on in the other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or

similar activities under the same or similar conditions and dealing wholly at arm's-length with the enterprise of which it is a permanent establishment and other enterprises controlling, controlled by or subject to the same common control as that enterprise. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis. The estimate adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than toward reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of this Convention, the profits to be attributed to the permanent establishment as provided in paragraph 1(a) of this Article shall include only the profits derived from the assets and activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of the Convention, the term "business profits" means income derived from any trade or business including income from the furnishing of services other than included services as defined in Article 12 (Royalties and Fees for Included Services) and including income from the rental of tangible personal property other than property described in paragraph 3(b) of Article 12 (Royalties and Fees for Included Services).

ARTICLE 8

Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including—

(a) the sale of tickets for such transportation on behalf of other enterprises;

(b) other activity directly connected with such transportation; and

(c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffice shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

6. Gains derived by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

ARTICLE 9

Associated Enterprises

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the Contracting State; or

(b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which, but for those conditions would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjusting, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting State shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of the State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;

(b) 25 per cent of the gross amount of the dividends in all other cases.

Subparagraph (b) and not subparagraph (a) shall apply in the case of dividends paid by a United States person which is a Regulated Investment Company. Subparagraph (a) shall not apply to dividends paid by a United States person which is a Real Estate Investment Trust, and subparagraph (b) shall only apply if the dividend is beneficially owned by an individual holding a less than 10 percent interest in the Real Estate Investment Trust. This paragraph shall not effect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights not being debt-claims, participating in profits, income from other corporate rights which are subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is

a resident; and income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the laws of the Contracting State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed based situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 10 percent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company); and

(b) 15 percent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State:

(a) and derived and beneficially owned by the Government of the other Contracting State, a political subdivision or local authority thereof, the Reserve Bank of India, or the Federal Reserve Banks of the United States, as the case may be, and such other institutions of either Contracting State as the competent authorities may agree pursuant to Article 27 (Mutual Agreement Procedure);

(b) with respect to loans or credits extended or endorsed

(i) by the Export Import Bank of the United States, when India is the first-mentioned Contracting State; and

(ii) by the EXIM Bank of India, when the United States is the first-mentioned Contracting State; and

(c) to the extent approved by the Government of that State, and derived and beneficially owned by any person, other than a person referred to in subparagraphs (a) and (b), who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this behalf by the Government of the first-mentioned Contracting State;

shall be exempt from tax in the first-mentioned Contracting State.

4. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities, and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of the Convention. However, the term "interest" does not include income dealt with in Article 10 (Dividends).

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political subdivision, local authority, or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 12

Royalties and Fees for Included Services

1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article (other than services described in sub-paragraph (b) of this paragraph):

(i) during the first five taxable years for which this Convention has effect,

(A) 15 percent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political subdivision or a public sector company; and

(B) 20 percent of the gross amount of the royalties or fees for included services in all other cases; and

(ii) during the subsequent years, 15 percent of the gross amount of royalties or fees for included services;

and

(b) in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this Article, 10 percent of the gross amount of the royalties or fees for included services.

3. The term "royalties" as used in this Article means:

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and

(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.

4. For purposes of this Article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through

the provision of services of technical or other personnel) if such services:

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or

(b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

5. Notwithstanding paragraph 4, "fees for included services" does not include amounts paid:

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a);

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals making the payment; or

(e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 15 (Independent Personal Services).

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting States, in which the royalties or fees for included services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for included services are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

7. (a) Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or a resident of that State. Where, however, the person paying the royalties or fees for included services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for included services was incurred, and such royalties or fees for included services are borne by such permanent establishment or fixed base, then such royalties or fees for included services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(b) Where under subparagraph (a) royalties or fees for included services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for included services relate to services performed, in one of the Contracting States, the royalties or fees for included services shall be deemed to arise in that Contracting State.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for included services paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 13

Gains

Except as provided in Article 8 (Shipping and Air Transport) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

ARTICLE 14

Permanent Establishment Tax

1. A company which is a resident of India may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention.

(a) Such tax, however, may be imposed only on:

(i) the portion of the business profits of the company subject to tax in the United States which represents the dividend equivalent amount; and

(ii) the excess, if any, of interest deductible in the United States in computing the profits of the company that are subject to tax in the United States and either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income From Immovable Property (Real Property)), Article 12 (Royalties and Fees for Included Services) as fees for included services, or Article 13 (Gains) of this Convention over the interest paid by or from the permanent establishment or trade or business in the United States.

(b) For purposes of this article, business profits means profits that are effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States and are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income From Immovable Property (Real Property)), Article 12 (Royalties and Fees for Included Services) as fees for included services or Article 13 (Gains) of this Convention.

(c) The tax referred to in subparagraph (a) shall not be imposed at a rate exceeding:

(i) the rate specified in paragraph 2(a) of Article 10 (Dividends) for the tax described in subparagraph (a)(i); and

(ii) the rate specified in paragraph 2 (a) or (b) (whichever is appropriate) of Article 11 (Interest) for the tax described in subparagraph (a)(ii).

2. A company which is a resident of the United States may be subject to tax in India at a rate higher than that applicable to the domestic companies. The difference in the tax rate shall not, however, exceed the existing difference of 15 percentage points.

3. In the case of a banking company which is a resident of the United States, the interest paid by the permanent establishment of such a company in India to the head office may be subject in India to a tax in addition to the tax imposable under the other provisions of this Convention at a rate which shall not exceed the rate specified in paragraph 2(a) of Article 11 (Interest).

ARTICLE 15

Independent Personal Services

1. Income derived by a person who is an individual or firm of individuals (other than a company) who is a resident of a Contracting State from the performance in the other Contracting State of professional services or other independent activities of a similar character shall be taxable only in the first-mentioned State except in the following circumstances when such income may also be taxed in the other Contracting State:

(a) if such person has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

(b) if the person's stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in the relevant taxable year.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of Articles 17 (Directors' Fees), 18 (Income Earned by Entertainers and Athletes), 19 (Remuneration and Pensions in Respect of Government Service), 20 (Private Pensions, Annuities, Alimony, and Child Support), 21 (Payments Received by Students and Apprentices) and 22 (Payments Received by Professors, Teachers and Research Scholars), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant taxable year;

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base or a trade or business which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

Income Earned by Entertainers and Athletes

1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the net income derived by such entertainer or athlete from such activities (after deduction of all expense incurred by him in connection with his visit and performance) does not exceed one thousand five hundred United States dollars ($1,500) or its equivalent Indian rupees for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits), 15 (Independent Personal Services) and 16 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised unless the entertainer, athlete, or other person establishes that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. Income referred to in the preceding paragraphs of this Article derived by a resident of a Contracting State in respect of activities exercised in the other Contracting State shall not be taxed in that other State if the visit of the entertainers or athletes to that other State is supported wholly or substantially from the public funds of

the Government of the first-mentioned Contracting State, or of a political subdivision or local authority thereof.

4. The competent authorities of the Contracting States may, by mutual agreement, increase the dollar amounts referred to in paragraph 1 to reflect economic or monetary developments.

ARTICLE 19

Remuneration and Pensions in Respect of Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that state or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16 (Dependent Personal Services), 17 (Directors' Fees), 18 (Income Earned by Entertainers and Athletes) and 20 (Private Pensions, Annuities, Alimony and Child Support) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

Private Pensions, Annuities, Alimony and Child Support

1. Any pension, other than a pension referred to in Article 19 (Remuneration and Pensions in Respect of Government Service), or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. Notwithstanding paragraph 1, and subject to the provisions of Article 19 (Renumeration and Pensions in Respect of Government Service), social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

3. The term "pension" means a periodic payment made in consideration of past services or by way or compensation for injuries received in the course of performance of services.

4. The term "annuity" means stated sums payable periodically at stated times during life or during a specified or ascertainable number of years, under an obligation to make the payments in

return for adequate and full consideration in money or money's worth (but not for services rendered).

5. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

6. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 21

Payments Received by Students and Apprentices

1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State principally for the purpose of his education or training shall be exempt from tax in that other State, on payments which arise outside that other State for the purposes of his maintenance, education or training.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken.

4. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the taxable year in which he visits the other Contracting State or in the immediately proceding taxable year.

ARTICLE 22

Payments Received by Professors, Teachers and Research Scholars

1. An individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college or other recognized educational institution in that State, and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 23

Other Income

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property (Real Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24

Limitation on Benefits

1. A person (other than an individual) which is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if:

(a) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by one or more individual residents of one of the Contracting States, one of the Contracting States or its political subdivisions or local authorities, or other individuals subject to tax in either Contracting State or their worldwide incomes, or citizens of the United States; and

(b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are not residents of one of the Contracting States, one of the Contracting States or its political subdivisions or local authorities, or citizens of the United States.

2. The provisions of paragraph 1 shall not apply if the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company).

3. The provisions of paragraph 1 shall not apply if the person deriving the income is a company which is a resident of a Contract-

ing State in whose principal class of shares there is substantial and regular trading on a recognized stock exchange. For purposes of the preceding sentence, the term "recognized stock exchange" means:

(a) in the case of the United States, the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Act of 1934;

(b) in the case of India, any stock exchange which is recognized by the Central Government under the Securities Contracts Regulation Act, 1956; and

(c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. A person that is not entitled to the benefits of this Convention pursuant to the provisions of the preceding paragraphs of this Article may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines.

ARTICLE 25

Relief From Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income

(a) the income tax paid to India by or on behalf of such citizen or resident; and

(b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of India and from which the United States company receives dividends, the income tax paid to India by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered income taxes.

2. (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States.

(b) Further, where such resident is a company by which a surtax is payable in India, the deduction in respect of income tax paid in the United States shall be allowed in the first instance from income tax payable by the company in India and as to the balance, if any, from surtax payable by it in India.

3. For the purposes of allowing relief from double taxation pursuant to this Article, income shall be deemed to arise as follows:

(a) income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 3 of Article 1 (General Scope)) shall be deemed to arise in that other State;

(b) income derived by a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention shall be deemed to arise in the first-mentioned State.

Notwithstanding the proceding sentence, the determination of the source of income for purposes of this Article shall be subject to such source rules in the domestic laws of the Contracting States as apply for the purpose of limiting the foreign tax credit. The preceding sentence shall not apply with respect to income dealt with in Article 12 (Royalties and Fees for Included Services). The rules of this paragraph shall not apply in determining credits against United States tax for foreign taxes other than the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered).

Article 26

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States.

2. Except where the provisions of paragraph 3 of Article 7 (Business Profits) apply, the taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 8 of Article 12 (Royalties and Fees for Included Services) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be sub-

jected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this article shall be construed as preventing either Contracting State from imposing the taxes described in Article 14 (Permanent Establishment Tax) or the limitations described in paragraph 3 of Article 7 (Business Profits).

ARTICLE 27

Mutual Agreement Procedure

1. Where a persons considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

ARTICLE 28

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to

the Convention, in particular, for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes, but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases, or otherwise. The competent authorities of the Contracting States shall agree from time to time on the list of information or documents which shall be furnished on a routine basis.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and in the same form as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

5. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered):

(a) in the United States, to all taxes imposed under Title 26 of the United States Code; and

(b) in India, to the income tax, the wealth tax and the gift tax.

ARTICLE 29

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 30

Entry Into Force

1. Each Contracting State shall notify the other Contracting State in writing, through diplomatic channels, upon the completion of their respective legal procedures to bring this Convention into force.

2. The Convention shall enter into force on the date of the latter of such notifications and its provisions shall have effect:

(a) in the United States

(i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the date on which the Convention enters into force;

(ii) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force; and

(b) in India, in respect of income arising in any taxable year beginning on or after the first day of April next following the calendar year in which the Convention enters into force.

ARTICLE 31

Termination

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of the entry into force of the Convention, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

(a) in the United States

(i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the calendar year in which notice of termination is given; and

(ii) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the calendar year in which the notice of termination is given; and

(b) in India, in respect of income arising in any taxable year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Convention.

DONE at New Delhi in duplicate, this 12th day of September, 1989, in the English and Hindi languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
JOHN R. HUBBARD,
Ambassador.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA:
N.K. SENGUPTA,
Secretary to the Government of India.

PROTOCOL

At the signing today of the Convention between the United States of America and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention:

I. Ad Article 5

It is understood that where an enterprise of a Contracting State has a permanent establishment in the other Contracting State in accordance with the provisions of paragraphs 2(j), 2(k) or 2(l) of Article 5 (Permanent Establishment), and the time period referred to in that paragraph extends over two taxable years, a permanent establishment shall not be deemed to exist in a year, if any, in which the use, site, project or activity, as the case may be, continues for a period or periods aggregating less than 30 days in that taxable year. A permanent establishment will exist in the other taxable year, and the enterprise will be subject to tax in that other Contracting State in accordance with provisions of Article 7 (Business Profits), but only on income arising during that other taxable year.

II. Ad Article 7

Where the law of the Contracting State in which a permanent establishment is situated imposes, in accordance with the provisions of paragraph 3 of Article 7 (Business Profits), a restriction on the amount of executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in making such a determination of profits the deduction in respect of such executive and general administrative expenses in no case shall be less than that allowable under the Indian Income-tax Act as on the date of signature of this Convention.

III. Ad Articles 7, 10, 11, 12, 15, and 23

It is understood that for the implementation of paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 4 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties and Fees for Included Services), paragraph 1 of Article 15 (Independent Personal Services), and paragraph 2 of Article 23 (Other Income), any income attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State in which such permanent establishment or fixed

base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

IV. Ad Article 12

It is understood that fees for included services, as defined in paragraph 4 of Article 12 (Royalties and Fees for Included Services) will, in accordance with United States law, be subject to income tax in the United States based on net income and, when earned by a company, will also be subject to the taxes described in paragraph 1 of Article 14 (Permanent Establishment Tax). The total of these taxes which may be imposed on such fees, however, may not exceed the amount computed by multiplying the gross fee by the appropriate tax rate specified in subparagraph (a) or (b), whichever is applicable, of paragraph 2 of Article 12.

V. Ad Article 14

It is understood that references in paragraph 1 of Article 14 (Permanent Establishment Tax) to profits that are subject to tax in the United States under Article 6 (Income from Immovable Property (Real Property)), under Article 12 (Royalties and Fees for Included Services), as fees for included services as defined in that Article, or under Article 13 (Gains) of this Convention, are intended to refer only to cases in which the profits in question are subject to United States tax based on net income (*i.e.,* by virtue of being effectively connected, or being treated as effectively connected, with the conduct of a trade or business in the United States). Any income which is subject to tax under those Articles based on gross income is not subject to tax under Article 14.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at New Delhi in duplicate, this 12th day of September, 1989, in the English and Hindi languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:
JOHN R. HUBBARD,
Ambassador.

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDIA:
N.K. SENGUPTA,
Secretary to the Government of India.

○

101ST CONGRESS
1st Session

SENATE

TREATY DOC.
101-6

COUNCIL OF EUROPE-OECD CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CONVENTION NEGOTIATED BY THE MEMBER STATES OF THE COUNCIL OF EUROPE AND THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS, DONE AT STRASBOURG, JANUARY 25, 1988, AND SIGNED BY THE UNITED STATES IN PARIS ON JUNE 28, 1989



NOVEMBER 8, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

39-118 WASHINGTON : 1989

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 8, 1989.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification a Convention on Mutual Administrative Assistance in Tax Matters, among the member States of the Council of Europe and the Organization for Economic Co-operation and Development (OECD), done at Strasbourg, January 25, 1988, and signed by the United States in Paris on June 28, 1989. I also transmit the report of the Department of State on the convention.

Under the convention, Parties will exchange information for the assessment, recovery, and enforcement of tax(es) and tax claims, and to assist in the prosecution of a taxpayer. The United States will exchange information on taxes on income or profits, capital gains, or net wealth imposed by the Federal Government and, in keeping with the U.S. Model Treaty, will not exchange information on State or local taxes.

The taxpayer protections available under the convention are at least as extensive as under the U.S. Model Treaty. Information provided by the United States to another party may not be released to a third party without U.S. consent.

The convention also provides for assistance in the recovery of taxes and for assistance in service of documents. The United States has chosen to reserve on these provisions, in accordance with the option available to all Signatories.

I recommend the Senate give early and favorable consideration to the convention and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 24, 1989.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Convention negotiated by the member States of the Council of Europe and the Organization for Economic Co-operation and Development (OECD), on Mutual Administrative Assistance in Tax Matters, done at Strasbourg, January 25, 1988, and signed by the United States in Paris on June 28, 1989.

The Convention is the first multilateral tax treaty of its kind, and is open to ratification, acceptance, or approval by any of the member States of the Council of Europe or the OECD. It shall enter into force three months after five States have expressed their consent to be bound by its provisions. The provisions of the Convention are consistent with those of the U.S. Model Tax Treaty and with other tax treaties currently in force for the U.S.

Under the Convention, the Parties will exchange information for the assessment, recovery, and enforcement of tax(es) and tax claims, and to assist in the prosecution of a taxpayer. Like information exhange under the U.S. Model Treaty, information exchange under the Convention is not limited to cases of suspected tax evasion.

The Convention applies inter alia, to taxes on income or profits, taxes on capital gains, and taxes on net wealth imposed on behalf of a Party. Consistent with the U.S. Model Treaty, the United States will exchange information only on taxes imposed by the Federal government, and will not exchange information on state or local taxes.

The taxpayer protections available under the Convention are at least as extensive as those available under the U.S. Model Treaty. Information provided by the United States to another party may not be released to a third party without U.S. consent. Neither the OECD, the Council of Europe, nor any other international organization would have access to the taxpayer information.

Section II of the Convention provides for assistance in the recovery of taxes, but permits member States to reserve on these provisions. The United States intends to reserve on these provisions because the U.S. competent tax authority has not made use of the broad collection assistance provisions in four existing tax treaties which contain them.

Section III of the Convention provides for assistance in service of documents, but again permits States to reserve on this provision. The United States intends to do so on assistance in service of documents, as documents may be and are generally served by mail in the United States. No assistance by the United States is needed. The United States will, however, not reserve on Paragraph Three of this Section, which affirms access by any Party to the postal system of any other Party for the service of documents.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention.

Respectfully submitted,

JAMES A. BAKER III.

Convention on Mutual Administrative Assistance in Tax Matters

PREAMBLE

The member States of the Council of Europe and the Member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention.

Considering that the development of international movement of persons, capital, goods and services—although highly beneficial in itself—has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognized as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should not carry out measures or supply information except in conformity with their domestic law and practice, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Desiring to conclude a convention on mutual administrative assistance in tax matters;

Have agreed as follows;

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

Object of the Convention and persons covered

1. The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such

assistance may involve, where appropriate, measures taken by judicial bodies.

2. Such administrative assistance shall comprise:

a. exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;

b. assistance in recovery, including measures of conservancy; and

c. service of documents.

3. A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

Article 2

Taxes covered

1. This Convention shall apply;

a. to the following taxes:

i. taxes on income or profits,

ii. taxes on capital gains which are imposed separately from the tax on income or profits,

iii. taxes on net wealth, imposed on behalf of a Part; and

b. to the following taxes;

i. taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,

ii. compulsory social security contributions payable to general government or to social security institutions established under public law, and

iii. taxes in other categories, except customs duties, imposed on behalf of a Party, namely;

A. estate, inheritance or gift taxes,

B. taxes on immovable property,

C. general consumption taxes, such as value-added or sales taxes,

D. specific taxes on goods and services such as excise taxes,

E. taxes on the use or ownerhip of motor vehicles,

F. taxes on the use or ownership of movable property other an motor vehicles,

G. any other taxes;

iv. taxes in categories referred to in sub-paragraph (iii) above which are imposed on behalf of political sub-divisions or local authorities of a Party.

2. The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.

3. The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the "Depositaries") of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

4. The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

CHAPTER II

GENERAL DEFINITIONS

Article 3

Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a. the terms "applicant State" and "requested State" mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;

b. the term "tax" means any tax or social security contribution to which the Convention applies pursuant to Article 2;

c. the term "tax claim" means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;

d. the term "competent authority" means the persons and authorities listed in Annex B;

e. the term "nationals", in relation to a Party, means;

i. all individuals possessing the nationality of that Party, and

ii. all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

2. As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.

3. The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

CHAPTER III

FORMS OF ASSISTANCE

SECTION I

Exchange of information

Article 4

General provision

1. The Parties shall exchange any information, in particular as provided in this Section, that is foreseeably relevant to:

a. the assessment and collection of tax, and the recovery and enforcement of tax claims, and

b. the prosecution before an administrative authority or the initiation of prosecution before a judicial body.

Information which is unlikely to be relevant to these purposes shall not be exchanged under this Convention.

2. A Party may use information obtained under this Convention as evidence before a criminal court only if prior authorisation has been given by the Party which has supplied the information. However, any two or more Parties may mutually agree to waive the condition of prior authorisation.

3. Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

Article 5

Exchange of information on request

1. At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.

2. If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

Article 6

Automatic exchange of information

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

Article 7

Spontaneous exchange of information

1. A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:

a. the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;

b. a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;

c. business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;

d. a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;

e. information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.

2. Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

Article 8

Simultaneous tax examinations

1. At the request of one of them, two or more Parties, shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.

2. For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Article 9

Tax examination abroad

1. At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.

2. If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.

3. A Party may inform one of the Depositaries of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

Article 10

Conflicting information

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

SECTION II

Assistance in recovery

Article 11

Recovery of tax claims

1. At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.

2. The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

3. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

Article 12

Measures of conservancy

At the request of the applicant State the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Article 13

Documents accompanying the request

1. The request for administrative assistance under this Section shall be accompanied by:

a. a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to

paragraph 2 of Article 11, the tax claim is not or may not be contested.

b. an official copy of the instrument permitting enforcement in the applicant State, and

c. any other document required for recovery or measures of conservancy.

2. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

Article 14

Time limits

1. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.

2. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.

3. In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

Article 15

Priority

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

Article 16

Deferral of payment

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

Section III

Service of documents

Article 17

Service of documents

1. At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.

2. The requested State shall effect service of documents:

a. by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;

b. to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.

3. A Party may effect service of documents directly through the post on a person within the territory of another Party.

4. Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.

5. When a document is served in accordance with this Article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

CHAPTER IV

PROVISIONS RELATING TO ALL FORMS OF ASSISTANCE

Article 18

Information to be provided by the applicant State

1. A request for assistance shall indicate where appropriate:

a. the authority or agency which initiated the request made by the competent authority;

b. the name, address and any other particulars assisting in the identification of the person in respect of whom the request is made;

c. in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;

d. in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

e. in the case of a request for service of documents, the nature and the subject of the document to be served;

f. whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 19.

2. As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

Article 19

Possibility of declining a request

The requested State shall not be obliged to accede to a request if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

Article 20

Response to the request for assistance

1. If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.

2. If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.

3. If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

Article 21

Protection of persons and limits to the obligation to provide assistance

1. Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.

2. Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:

a. to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;

b. to carry out measures which it considers contrary to public policy (ordre public) or to its essential interests;

c. to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;

d. to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (ordre public) or to its essential interests;

e. to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to

generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

f. to provide assistance if the application of this Convention would lead to discrimination between a national of the requested State and nationals of the applicant State in the same circumstances.

Article 22

Secrecy

1. Any information obtained by a Party under this Convention shall be treated as secret in the same manner as information obtained under the domestic laws of that Party, or under the conditions of secrecy applying in the supplying Party if such conditions are more restrictive.

2. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) involved in the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes, subject to prior authorisation by the competent authority of the supplying Party. However, any two or more Parties may mutually agree to waive the condition of prior authorisation.

3. If a Party has made a reservation provided for in sub-paragraph *a.* of paragraph 1 of article 30 any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

Article 23

Proceedings

1. Proceedings relating to measures taken under this Convention by the requested State will be brought only before the appropriate body of that State.

2. Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of re-

covery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.

3. As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

CHAPTER V

SPECIAL PROVISIONS

Article 24

Implementation of the Convention

1. The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorize subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.

2. Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavor to resolve the situation by mutual agreement.

3. A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.

4. A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.

5. Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.

6. The Secretary General of OECD shall inform the Parties and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

Article 25

Language

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

Article 26

Costs

Unless otherwise agreed bilaterally by the Parties concerned:

a. ordinary costs incurred in providing assistance shall be borne by the requested State;

b. extraordinary costs incurred in providing assistance shall be borne by the applicant State.

CHAPTER VI

FINAL PROVISIONS

Article 27

Other international agreements or arrangements

1. The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

2. Notwithstanding the rules of the present Convention, those Parties which are members of the European Economic Community shall apply in their mutual relations the common rules in force in that Community.

Article 28

Signature and entry into force of the Convention

1. This Convention shall be open for signature by the member States of the Council of Europe and the Member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.

2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

3. In respect of any member State of the Council of Europe or any Member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

Territorial application of the Convention

1. Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2. Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.

3. Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

Article 30

Reservations

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:

a. not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in subparagraph (b) of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;

b. not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

c. not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under subparagraph (a) or (b) above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;

d. not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

e. not to permit the service of documents through the post as provided for in paragraph 3 of Article 17.

2. No other reservation may be made.

3. After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.

4. Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.

5. A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

Article 31

Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.

3. Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

Article 32

Depositaries and their functions

1. The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the Member countries of OECD of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance or approval;

c. any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;

d. any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;

e. any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;

f. any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;

g. any other act, notification or communication relating to this Convention.

2. The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, the 25th day of January 1988, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of the Council of Europe and the other in the archives of OECD. The Secretaries General of the Council of Europe and of OECD shall transmit certified copies to each member State of the Council of Europe and Member country of OECD.

Certified a true copy of the original, in English and in French, deposited in the archives of the Council of Europe and the OECD.

Paris, this 12th day of September 1989.

Christian Schricke

The Legal Counsel,
Head of the Legal Directorate
of the OECD.

ANNEXES

ANNEX A

Taxes to Which the Convention Would Apply

(Paragraph 2 of Article 2 of the Convention)

ANNEX B

Competent Authorities

(Paragraph 1 (d) of Article 3 of the Convention)

ANNEX C

Definition of the Word "National" for the Purpose of the Convention

(Paragraph 1 (e) of Article 3 of the Convention)

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101ST CONGRESS
1st Session

SENATE

TREATY DOC.
101-7

ANNEX III TO THE 1973 CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

ANNEX III (REGULATIONS FOR THE PREVENTION OF POLLUTION BY HARMFUL SUBSTANCES CARRIED BY SEA IN PACKAGED FORMS OR IN FREIGHT CONTAINERS, PORTABLE TANKS OR ROAD AND RAIL TANK WAGONS), AN OPTIONAL ANNEX TO THE 1973 INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, AS MODIFIED AND INCORPORATED BY THE 1978 PROTOCOL RELATING THERETO (MARPOL 73/78)



NOVEMBER 9, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

39-118

WASHINGTON : 1989

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 9, 1989.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate, Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons), an optional annex to the 1973 International Convention for the Prevention of Pollution from Ships, as modified and incorporated by the 1978 protocol relating thereto (MARPOL 73/78). I also transmit, for the information of the Senate, the report of the Department of State with its attached analysis of Annex III.

MARPOL 73/78 is the global agreement to control pollution from ships. Annex III establishes uniform regulations for the transport of packaged harmful substances, including packaging, marking/labelling, documentation, and stowage requirements and, if necessary, quantity limitations. It complements the other annexes to MARPOL 73/78, which relate to the transport of oil (Annex I) and harmful substances carried in bulk (Annex II), and to ship-generated sewage (Annex IV) and garbage (Annex V).

The United States ratified MARPOL 73/78 on August 12, 1980, along with Annexes I and II, and it entered into force for the United States on October 2, 1983. U.S. ratification of Annex III at this time would bring the annex into force. Moreover, agreement has been reached that, once in force, the Parties will adopt U.S.-sponsored amendments to the annex that will strengthen its provisions and make it a more effective environmental instrument.

U.S. ratification of MARPOL Annex III will be an important step in minimizing pollution of the world's oceans from discharges of packaged harmful substances. I recommend the Senate give early consideration to Annex III of MARPOL 73/78 and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 4, 1989.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmittal to the Senate for its advice and consent to ratification, Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons), an optional annex to the 1973 International Convention for the Prevention of Pollution from Ships, as modified and incorporated by the 1978 Protocol relating thereto (MARPOL 73/78).

MARPOL 73/78 is the global agreement to control accidental and operational discharges of pollution from ships. It includes a framework agreement setting forth general obligations, and five annexes that relate to particular sources of marine pollution. Two of these annexes are mandatory for all MARPOL Parties—Annexes I and II, which relate respectively to the transport of oil and harmful substances carried in bulk. The other three annexes are optional—Annex III, which relates to the transport of harmful substances in packaged form, and Annexes IV and V, which regulate ship-generated sewage and garbage respectively.

The United States ratified the 1978 Protocol (which incorporates with modifications the 1973 Convention) on August 12, 1980, along with Annexes I and II. The Protocol entered into force for the United States on October 2, 1983. On December 30, 1987, the United States ratified optional Annex V. The remaining annex—Annex IV—is still the subject of ongoing review and Senate advice and consent is not being sought at this time.

Annex III sets forth general regulations for the marine transport of harmful packaged substances. Many of these substances, such as pesticides and herbicides, are known to kill or retard the growth of marine life and to bio-accumulate in marine organisms, causing potential danger up the food chain, including health risks to humans as well as to birds and other wildlife that eat fish or shellfish. Annex III provides that the packaging of harmful substances must be adequate to minimize the hazard to the marine environment posed by their specific contents. Packages must be marked with a distinctive label indicating that the contents are harmful, and must be stowed so as to minimize the risk to the marine environment. In addition, ships must carry a special list or manifest setting forth the harmful substances on board and their stowage locations. Finally, parties are permitted to prohibit or impose quantity limita-

tions on the carriage of certain very hazardous substances. Exceptions are permitted in emergency situations. A more detailed analysis of each of the eight regulations that comprise Annex III is attached hereto for the information of the Senate.

Unlike Annexes I and II, which have been construed to apply only to seagoing vessels, Annex III will apply to all ships that carry harmful substances in packaged form. As with all other MARPOL 73/78 annexes, parties to Annex III will be required to apply its regulations to ships of non-party States using their ports or offshore terminals.

Article 3 of MARPOL 73/78 exempts warships, naval auxiliary and other ships owned or operated by a State and used in governmental non-commercial service, from the application of the Convention. Such ships, therefore, will be exempt from the application of the provisions of Annex III, although each party will be required to take appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, to ensure that such ships act in a manner consistent, so far as is reasonable and practicable, with Annex III.

Annex III will enter into force twelve months after the date on which not less than 15 States have become parties, the combined merchant fleets of which constitute not less than fifty percent of the gross tonnage of the world's merchant shipping. Thus far 38 States have ratified Annex III, constituting approximately 48.27 percent of the world's shipping tonnage. U.S. ratification would contribute sufficient tonnage (approximately 5 percent) to bring Annex III into force, and would demonstrate our continued resolve to protect the marine environment through cooperation within the international community.

Although the requirements imposed by Annex III are desirable and pose no difficulties for the United States, we have previously withheld ratification as we pursued amendments to Annex III that would make it more meaningful and enforceable. It had been hoped that such amendments would be approved in time for the United States to pursue ratification of Annex III in conjunction with Annex V. However, the greater complexities involved in the Annex III amendments made this impossible. It was not until last fall, after three years of negotiations, that the International Maritime Organization's Marine Environment Protection Committee (MEPC) agreed to U.S.-sponsored amendments to Annex III. These amendments contain clear criteria for the identification of harmful substances, strengthen the labelling and documentation requirements, and provide for implementation through an updated version of the International Maritime Dangerous Goods (IMDG) code, a set of recommended international safety standards for the carriage of dangerous goods. Although the amendments will not be formally adopted until after Annex III enters into force, the MEPC is in the meantime proceeding with the implementation of the standards imposed by the revised Annex III, through appropriate revision of the IMDG code. I recommend that the United States proceed with ratification now, rather than wait for formal adoption of the amendments. Without U.S. ratification, Annex III will not come into force and the amended version would have to be ratified by the 38 countries that have already ratified the Annex. U.S. ratification at this

time, in contrast, would bring Annex III into force and thereby permit the amendments to be adopted through the tacit amendment procedure specified in Article 16(2) of MARPOL 73/78. This amendment procedure, which was utilized with regard to Annex I and II after their entry into force and which is currently in process with regard to Annex V, was established to permit more effective and rapid adoption of technical amendments to MARPOL 73/78. U.S. acceptance of the amendments to Annex III will not require further advice and consent by the Senate.

Annex III will require implementing legislation which is being prepared. U.S. ratification of Annex III has the support of the U.S. Coast Guard and the Department of State and all other interested agencies of the Executive Branch, as well as environmental organizations and a substantial majority of the maritime industry. Although a few concerns were expressed about the economic impact of potentially more stringent packaging requirements, these are being addressed through the International Maritime Organization with the participation of U.S. industry.

Annex III will make a significant contribution to the protection of the marine environment, by substantially reducing the threat of harmful substances being released into the marine environment through collisions, groundings and other accident and operational causes. I recommend that Annex III be transmitted to the Senate for its advice and consent to ratification at an early date.

Respectfully submitted,

LAWRENCE S. EAGLEBURGER,
Acting Secretary.

Attachment: Analysis of Annex III.

Analysis of Annex III

REGULATION 1—APPLICATION

This provision states that Annex III applies to all ships carrying harmful substances in packaged forms, and prohibits the carriage of such substances except in accordance with the Annex. Parties are required to issue detailed requirements to implement Annex III so as to prevent or minimize pollution of the marine environment. Packagings of harmful substances must be treated as harmful substances unless adequate precautions have been taken to ensure that they contain no harmful residues.

REGULATION 2—PACKAGINGS

This provision requires packages to be adequate to minimize the hazard to the marine environment posed by the specific substance. The IMO has developed general guidance for the adequacy of packagings. This guidance specifies that marine pollutants should be carried in packagings which are capable of surviving when immersed in the sea for the time period necessary to effect a reasonable recovery in coastal sea areas without loss of contents. Survivability criteria should take into consideration the total packaging system used to contain the substance—for example, bags with inner plastic liners, consolidated by use of plastic wrapping, inside freight containers. In practice, the system consisting of waterproof packaging inside freight containers would be likely to meet the criteria for survivability.

REGULATION 3—MARKING AND LABELLING

This regulation requires that packages be durably marked with the correct technical name (as opposed to the trade name) and with a distinctive label indicating that the contents are harmful.

REGULATION 4—DOCUMENTATION

This provision requires ships carrying marine pollutants to maintain a special manifest or list, specifying the proper chemical name and location of each marine pollutant onboard. This list may be consolidated with the dangerous goods manifest required under Chapter VII of SOLAS provided a clear distinction is made between dangerous goods and marine pollutants. Shippers are required to certify that the shipment has been properly marked or labelled and is in proper condition for carriage.

REGULATION 5—STOWAGE

This regulation requires harmful substances to be properly stowed and secured onboard a vessel so as to minimize the hazards to the marine environment without impeding the safety of the

crew and ship. This means that the stowage requirements contained in SOLAS, Chapter VII, Part A, will take precedence in situations where they conflict with the Annex III stowage requirements.

REGULATION 6—QUANTITY LIMITATIONS

Regulation 6 allows Parties to prohibit or impose quantity limitations on the carriage of certain very hazardous substances. Such prohibitions or limitations are to be imposed only for sound scientific and technical reasons and after due consideration has been given to the characteristics of the ship, the packaging and the harmful substance. Because the quantities of harmful substances carried in bulk under Annex II are generally much greater than the quantities of packaged marine pollutants carried onboard dry cargo vessels, IMO has not to date identified a need to establish prohibitions or quantity limitations.

REGULATION 7—EXCEPTIONS

This provides that packaged harmful substances may be jettisoned only where necessary for the purpose of securing the safety of the ship or saving life at sea. In addition, Parties are required to take appropriate measures to regulate the washing of leakages overboard unless such measures would impair the safety of life or the ship.

REGULATION 8—NOTIFICATION

This regulation requires the master or owner of a ship to give 24-hour advance notification to the port authority before loading or unloading certain harmful substances designated by the port State.

International Convention for the Prevention of Pollution From Ships, 1973

Annex III

Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms, or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons

Regulation 1

Application

(1) Unless expressly provided otherwise, the Regulations of this Annex apply to all ships carrying harmful substances in packaged forms, or in freight containers, portable tanks or road and rail wagons.

(2) Such carriage of harmful substances if prohibited except in accordance with the provisions of this Annex.

(3) To supplement the provisions of this Annex the Government of each Party to the Convention shall issue or cause to be issued, detailed requirements on packaging, marking and labeling, documentation, stowage, quantity limitations, exceptions and notification, for preventing or minimizing pollution of the marine environment by harmful substances.

(4) For the purpose of this Annex, empty receptacles, freight containers, portable tanks and road and rail wagons which have been used previously for the carriage of harmful substances shall themselves be treated as harmful substances unless adequate precautions have been taken to ensure that they contain no residue that is hazardous to the marine environment.

Regulation 2

Packaging

Packaging, freight containers, portable tanks and road and rail tank wagons shall be adequate to minimize the hazard to the marine environment having regard to their specific contents.

Regulation 3

Marking and Labeling

Packages, whether shipped individually or in units or in freight containers, freight containers, portable tanks or road and rail tank wagons containing a harmful substance, shall be durably marked with the correct technical name (trade names shall not be used as the correct technical name), and further marked with a distincitve lable or stencil of label, indicating that the contents are harmful.

Such identification shall be supplemented where possible by any other means, for example by the use of the United Nations number.

Regulation 4

Documentation

(1) In all documents relating to the carriage of harmful substances by sea where such substances are named, the correct technical name of the substances shall be used (trade names shall not be used).

(2) The shipping documents supplied by the shipper shall include a certificate or declaration that the shipment offered for carriage is properly packed, marked and labeled and in proper condition for carriage to minimize the hazard to the marine environment.

(3) Each ship carrying harmful substances shall have a special list or manifest setting forth the harmful substances on board and the location thereof. A detailed stowage plan which sets out the location of all harmful substances on board may be used in place of such special list or manifest. Copies of such documents shall also be retained on shore by the owner of the ship or his representative until the harmful substances are unloaded.

(4) In a case where the ship carries a special list or manifest or a detailed stowage plan, required for the carriage of dangerous goods by the International Convention for the Safety of Life at Sea in force, the documents required for the purpose of this Annex may be combined with those for dangerous goods. Where documents are combined, a clear distinction shall be made between dangerous goods and other harmful substances.

Regulation 5

Stowage

Harmful substances shall be properly stowed and secured so as to minimize the hazards to the marine environment without impairing the safety of ship and persons on board.

Regulation 6

Quantity Limitations

Certain harmful substances which are very hazardous to the marine environment may, for sound scientific and technical reasons, need to be prohibited for carriage or be limited as to quantity which may be carried abroad any one ship. In limiting the quantity due consideration shall be given to size, construction and equipment of the ship as well as the packaging and the inherent nature of the substance.

Regulation 7

Exceptions

(1) Discharge by jettisoning of harmful substances carried in package forms, freight containers, portable tanks or road and rail

tank wagons shall be prohibited except where necessary for the purpose of securing the safety of the ship or saving life at sea.

(2) Subject to the provisions of the present Convention, appropriate measures based on the physical, chemical and biological properties of harmful substances shall be taken to regulate the washing of leakages overboard provided that compliance with such measures would not impair the safety of the ship and persons on board.

Regulation 8

Notification

With respect to certain harmful substances, as may be designated by the Government of a Party to the Convention, the master or owner of the ship or his representative shall notify the appropriate port authority of the intent to load or unload such substances at least 24 hours prior to such action.

Certified true copy of the English text of the International Convention for the Prevention of Pollution from Ships, 1973, done at London on 2 November 1973, the original of which is deposited with the Secretary-General of the Inter-Governmental Maritime Consultative Organization.

For the Secretary-General of the Inter-Governmental Maritime Consultative Organization:

Thomas Allen

London. 20 V. 82

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