COMISIÓN DE LAS COMUNIDADES EUROPEAS

Bruselas, 22.8.2003
COM(2003) 512 final

2003/0195 (CNS)
2003/0196 (CNS)
2003/0197 (CNS)

Propuesta de

DECISIÓN DEL CONSEJO

relativa a la celebración, en nombre de la Comunidad Europea, de la Convención de las Naciones Unidas contra la delincuencia organizada transnacional

Propuesta de

DECISIÓN DEL CONSEJO

relativa a la celebración, en nombre de la Comunidad Europea, del Protocolo contra el tráfico ilícito de migrantes por tierra, mar y aire, que complementa la Convención de las Naciones Unidas contra la delincuencia organizada

Propuesta de

DECISIÓN DEL CONSEJO

relativa a la celebración, en nombre de la Comunidad Europea, del Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños, que complementa la Convención de las Naciones Unidas contra la delincuencia organizada

(presentadas por la Comisión)

EXPOSICIÓN DE MOTIVOS

1. ANTECEDENTES

En su Resolución 53/111, de 9 de diciembre de 1 998, la Asamblea General de las Naciones Unidas decidió establecer un comité especial intergubernamental de composición abierta con la finalidad de elaborar una Convención contra la delincuencia organizada transnacional, complementada mediante tres Protocolos:

– para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños (Protocolo sobre la trata de personas);

– contra el tráfico ilícito de migrantes por tierra, mar y aire (Protocolo sobre el tráfico ílicito de migrantes); y

– contra la fabricación y el tráfico ilícitos de armas de fuego, sus piezas y componentes y municiones (Protocolo sobre las armas de fuego).

La primera sesión formal del comité ad hoc tuvo lugar en Viena en enero de 1 999.

La Comisión presentó al Consejo una Recomendación de Decisión del Consejo por la que se le autorizaba a negociar todos los elementos del Proyecto de Convención que caen dentro de la competencia comunitaria. Asimismo se presentaron recomendaciones similares en relación con los tres Proyectos de Protocolo.

A raíz de las recomendaciones de la Comisión, el Consejo autorizó a la Comisión a negociar el proyecto de Convención contra la delincuencia organizada transnacional[1], los proyectos de Protocolos sobre la trata de personas y el tráfico ílicito de migrantes[2] y el proyecto de Protocolo sobre las armas de fuego[3].

La Comisión participó activamente en las negociaciones de Naciones Unidas en Viena, en estrecha cooperación con los Estados miembros de la UE y los países del G8 no pertenecientes a la UE. Las negociaciones sobre la Convención contra la delincuencia organizada transnacional se completaron en julio de 2 000, si bien la ultimación de los Protocolos sobre la trata de personas y el tráfico ílicito de migrantes se prolongó hasta octubre de 2 000. La Asamblea General de las Naciones Unidas aprobó estos tres instrumentos, en su 55ª Sesión, el 15 de noviembre de 2 000[4] y los declaró abiertos a la firma. Las negociaciones sobre el Protocolo de las armas de fuego duraron medio año más (hasta mayo de 2 001) y este instrumento fue aprobado por la Asamblea General de las Naciones Unidas, en su 55ª, sesión el 31 de mayo de 2 001[5] y declarado a partir de entonces abierto a la firma.

El Gobierno italiano acogió, del 12 al 15 de diciembre de 2 000, una Conferencia política de alto nivel en Palermo con el fin de firmar la Convención contra la delincuencia organizada transnacional y los Protocolos sobre la trata de personas y el

---

1 Decisión de 2 de mayo de 2000.
2 Decisión de 14 de febrero de 2000.
3 Decisión de 31 de enero de 2000.
4 Resolución de la Asamblea General de las Nacione s Unidas A/RES/55/25.
5 Resolución de la Asamblea General de las Nacione s Unidas A/RES/55/255.

tráfico ílicito de migrantes. Puesto que la Comisión, de conformidad con las directrices de negociación que se le habían marcado, había negociado con éxito que dichos instrumentos se declararan abiertos a la firma no solo de Estados sino también de organizaciones regionales de integración económica, tales como la CE, el Consejo autorizó la firma, en nombre de la Comunidad Europea, de la Convención contra la delincuencia organizada transnacional y los Protocolos sobre la trata de personas y el tráfico ílicito de migrantes durante dicha Conferencia[6]. El 12 de diciembre de 2 000, la Comunidad Europea firmó formalmente estos tres instrumentos en Palermo, junto con todos los Estados miembros de la UE. El Consejo dio la autorización para firmar el Protocolo sobre las armas de fuego en octubre de 2 001[7], de modo que este instrumento fue formalmente firmado por la Comunidad Europea en la sede de las Naciones Unidas en Nueva York el 16 de enero de 2 002.

El cuarto instrumento de ratificación de la Convención contra la delincuencia organizada transnacional se depositó en poder del Secretario General de las Naciones Unidas el 1º de julio. De conformidad con el artículo 38 de la Convención, [entrará] [entró] en vigor el 29 de septiembre de 2 003. Los tres protocolos que complementan la Convención contra la delincuencia organizada transnacional todavía no han entrado en vigor, ya que se requiere la ratificación de cada uno de ellos por, como mínimo, 40 Estados.

Una organización regional de integración económica no puede ratificar la Convención contra la delincuencia organizada transnacional (o un Protocolo) si, por lo menos, uno de sus Estados miembros no lo ha ratificado previamente. De los 15 Estados miembros de la UE, España (el 1º de marzo de 2 002) y Francia (el 29 de octubre de 2 002) han depositado ya un documento de ratificación para la Convención contra la delincuencia organizada transnacional y los Protocolos sobre el tráfico ílicito de migrantes y la trata de personas ante el Secretario General de las Naciones Unidas; los restantes Estados miembros se encuentran aún en curso de ratificación.

Los proyectos de Decisiones del Consejo relativas a la celebración, en nombre de la Comunidad Europea, del Protocolo sobre la trata de personas y del Protocolo sobre el tráfico ílicito de migrantes se presentan paralelamente al presente documento.

Once Estados miembros de la UE han firmado, aunque todavía no han ratificado, el Protocolo sobre las armas de fuego. De conformidad con el apartado 1 del artículo 17 del Protocolo sobre las armas de fuego, la posibilidad de firmarlo ha expirado el 12 de diciembre de 2 002. Sin embargo, el Protocolo está abierto a la adhesión de cualquier Estado según el apartado 4 del artículo 17. El Protocolo sobre las armas de fuego contiene disposiciones que exigen la modificación de la normativa comunitaria vigente y la introducción de nueva normas comunitarias. La Comisión está preparando estos actos legislativos. En este contexto, la Comisión no considera en la actualidad apropiado proponer al Consejo que celebre el Protocolo sobre las armas de fuego, lo que debe dejarse para una etapa posterior.

---

6 Decisión del Consejo 2001/87/CE, DO L 30 de 1.2.2001, p. 44.

7 Decisión del Consejo 2001/748/CE, DO L 280 de 24.10.2001, p. 5.

2. RESULTADO DE LAS NEGOCIACIONES SOBRE LA CONVENCIÓN CONTRA LA DELINCUENCIA ORGANIZADA TRANSNACIONAL

La Comisión considera que se han alcanzado plenamente los objetivos fijados por el Consejo en sus directrices de negociación.

La Convención contra la delincuencia organizada transnacional prevé medidas de lucha contra el blanqueo de capitales de elevado nivel, conformes con al acervo comunitario de medidas para prevenir la utilización del sistema financiero, así como de otras instituciones y profesiones consideradas vulnerables, para el blanqueo de capitales. La Comisión ha presentado asimismo una propuesta de Reglamento para complementar la legislación existente contra el blanqueo de capitales mediante disposiciones de cooperación aduanera de conformidad con el artículo 135 Tratado CE[8]. Finalmente, el trabajo preparatorio que acompaña el texto de la Convención hace referencia a las normas establecidas por el Grupo de Acción Financiera sobre Blanqueo de Capitales.

La Convención contra la delincuencia organizada transnacional contiene disposiciones sobre medidas contra la corrupción que caen dentro de la competencia comunitaria. Estas disposiciones son coherentes con el correspondiente acervo comunitairo, que prevé medidas para garantizar la libre circulación de bienes y servicios, entre las que se incluye legislación en materia de contratación pública destinada a asegurar la transparencia y la igualdad de acceso de todos los candidatos a los contratos públicos y los mercados de servicios, previniendo al mismo tiempo el fraude, la corrupción y la colusión entre los licitadores. Las medidas contra la corrupción forman también parte integrante de la política comunitaria de desarrollo, en especial, del Acuerdo de Cotonú de 23 de junio de 2 000, que establece un procedimiento de consulta en «los casos graves de corrupción» con la posibilidad, aunque sea como *ultima ratio*, de suspender la ayuda.

Por último, la Comunidad tiene competencia para adoptar las medidas necesarias en los ámbitos de la prevención y lucha contra el fraude que afecte a los intereses financieros de la Comunidad de conformidad con el apartado 4 del artículo 280 del Tratado CE. Sobre esta base, se ha presentado al Consejo una propuesta legislativa por la que se aproxima la legislación penal sustantiva de los Estados miembros en materia de definición del fraude, de la corrupción y del blanqueo que afecten a los intereses financieros comunitarios[9].

3. CONCLUSIONES

La Convención contra la delincuencia organizada transnacional es el primer instrumento global de lucha contra la delincuencia organizada transnacional. Establece para todos los Estados participantes un marco multilateral de gran utilidad y una serie de importantes normas mínimas. Por lo tanto, la Comunidad Europea está muy interesada en que entre en vigor lo más rápidamente posible. Al completarse el

---

8 Propuesta de Reglamento del Parlamento Europeo y del Consejo relativo a la prevención del blanqueo de capitales mediante la cooperación aduanera, COM(2002)328 final; DO C 227 E de 24.9.2002, p. 574.

9 Propuesta de Directiva del Parlamento Europeo y del Consejo relativa a la protección penal de los intereses financieros de la Comunidad COM(2001)272 final; DO C 240 E de 28.8.2001, p. 125.

proceso de ratificación por la Comunidad Europea se está enviando una clara señal de que la Comunidad está comprometida con los objetivos de dicho instrumento.

La propuesta de Decisión del Consejo adjunta constituye el instrumento jurídico de celebración de la Convención contra la delincuencia organizada transnacional, la base jurídica para lo cual puede encontrarse en los artículos 47, 55, 95, 135, 179 y 280, en relación con el artículo 300 del Tratado CE. La propuesta contiene un primer artículo por el que se aprueba la Convención contra la delincuencia organizada transnacional en nombre de la Comunidad Europea. El segundo artículo autoriza al Presidente del Consejo a designar a la persona habilitada para depositar, en nombre de la Comunidad Europea, el instrumento de aprobación. El texto de la Convención contra la delincuencia organizada transnacional figura como anexo I. El anexo II comprende la declaración sobre el alcance de la competencia de la Comunidad Europea con respecto a las cuestiones regidas por la Convención contra la delincuencia organizada transnacional que hay que depositar junto con el instrumento de aprobación (apartado 3 del artículo 36 de la Convención contra la delincuencia organizada transnacional).

El Consejo decidirá por mayoría cualificada, previa consulta al Parlamento Europeo (primera frase del apartado 2 del artículo 300 y primer párrafo del apartado 3 del artículo 300 del Tratado CE).

La Comisión propone, en consecuencia, que el Consejo adopte la Decisión adjunta.

2003/0195 (CNS)

Propuesta de

DECISIÓN DEL CONSEJO

relativa a la celebración, en nombre de la Comunidad Europea, de la Convención de las Naciones Unidas contra la delincuencia organizada transnacional

EL CONSEJO DE LA UNIÓN EUROPEA,

Visto el Tratado constitutivo de la Comunidad Europea, y, en particular, sus artículos 47, 55, 95, 135, 179 y 280, en relación con la primera frase del apartado 2 de su artículo 300 y el primer párrafo del apartado 3 de su artículo 300;

Vista la propuesta de la Comisión[10],

Visto el dictamen del Parlamento Europeo[11],

Considerando lo siguiente:

(1) Tras haber sido autorizada por el Consejo, la Comisión ha negociado, en nombre de la Comunidad, los elementos de la Convención que son de competencia comunitaria.

(2) El Consejo ha dado instrucciones a la Comisión para que negocie la adhesión de la Comunidad a este acuerdo internacional.

(3) La negociación ha concluido y los instrumentos resultantes se firmaron por la Comunidad el 12 de diciembre de 2 000 de conformidad con la Decisión del Consejo (2001/87/CE) de 8 de diciembre de 2 000[12].

(4) Algunos Estados miembros son Parte de la Convención mientras que el proceso de ratificación está en curso en otros Estados miembros.

(5) Se han cumplido las condiciones para que la Comunidad deposite el instrumento de aprobación establecidas en el apartado 3 del artículo 36 de la Convención.

(6) La Convención debe ser aprobada para que la Comunidad pueda llegar a ser Parte de la misma dentro de los límites de su competencia,

(7) Al depositar el instrumento de aprobación, la Comunidad debe depositar también una declaración sobre el alcance de la competencia de la Comunidad Europea con respecto a las cuestiones regidas por la Convención, de conformidad con el apartado 3 del artículo 36 de la Convención.

---

10 DO [...], de [...], p.

11 DO, p.

12 DO L 30 de 1.2.2001, p. 44.

DECIDE:

Artículo 1

Se aprueba, en nombre de la Comunidad Europea, la Convención de las Naciones Unidas contra la delincuencia organizada transnacional, tal como se establece en el anexo I.

El instrumento de confirmación formal de la Comunidad comprenderá una declaración de competencia de conformidad con el apartado 3 del artículo 36 de la Convención, tal como se establece en el anexo II.

Artículo 2

Se autoriza al Presidente del Consejo a designar a la persona habilitada para depositar el instrumento de confirmación formal con el fin de vincular la Comunidad.

La presente Decisión se publicará en el Diario Oficial de la Unión Europea.

Hecho en Bruselas,

por el Consejo,
el Presidente

ANEXOS

El ANEXO I incluirá el texto de la Convención.

ANEXO II

DECLARACIÓN SOBRE LA COMPETENCIA DE LA COMUNIDAD EUROPEA CON RESPECTO A LAS CUESTIONES REGIDAS POR LA CONVENCIÓN DE LAS NACIONES UNIDAS CONTRA LA DELINCUENCIA ORGANIZADA TRANSNACIONAL

El apartado 3 del artículo 36 de la Convención de las Naciones Unidas contra la delincuencia organizada transnacional establece que el instrumento de ratificación, aceptación o aprobación de una organización regional de integración económica contendrá una declaración en la que se especificarán las cuestiones regidas por la Convención con respecto a las cuales se haya transferido la competencia a la organización por aquellos de sus Estados miembros que sean Parte de la Convención.

La Convención de las Naciones Unidas contra la delincuencia organizada transnacional se aplicará, por lo que se refiere a las competencias transferidas a la Comunidad Europea, a los territorios a los que se aplica el Tratado constitutivo de la Comunidad Europea y bajo las condiciones establecidas en dicho Tratado, en particular, su artículo 299.

De conformidad con el artículo 299, la presente Declaración no es aplicable a los territorios de los Estados miembros en que dicho Tratado no se aplica y se entiende sin perjuicio de los actos o posiciones que puedan adoptar al amparo de la Convención los Estados miembros de que se trate en nombre de dichos territorios y en su interés. De conformidad con las disposiciones mencionadas anteriormente, la presente Declaración indica la competencia que los Estados miembros han transferido a la Comunidad, de conformidad con los Tratados, en las cuestiones regidas por la Convención. El alcance y el ejercicio de tal competencia comunitaria están, por su propia naturaleza, sujetos a evolución continua, de modo que la Comunidad completará o modificará la presente declaración, de ser necesario, de conformidad con el apartado 3 del artículo 36 de la Convención.

La Comunidad señala que tiene competencia en lo relativo al establecimiento progresivo del mercado interior, incluido un espacio sin fronteras interiores en el que está garantizada la libre circulación de bienes y servicios de conformidad con las disposiciones del Tratado constitutivo de la Comunidad Europea. Esto incluye medidas para luchar contra el blanqueo de capitales y para garantizar la transparencia y la igualdad de acceso de todos los candidatos a los contratos públicos y los mercados de servicios, lo que contribuye a la prevención de la corrupción. La Comunidad tiene asimismo competencia en relación con la cooperación aduanera entre los Estados miembros de la UE y entre estos y la Comisión, lo que complementa las restantes medidas de prevención del blanqueo de capitales. La Comunidad tiene asimismo competencia para adoptar las medidas necesarias en los ámbitos de la prevención y de la lucha contra el fraude o cualquier otra actividad ilegal, incluidos la corrupción y el blanqueo de capitales, que afecten a los intereses financieros de la Comunidad. Por consiguiente, en estos ámbitos, corresponde a la Comunidad adoptar las normas y reglamentos pertinentes y figura entre sus competencias la de asumir compromisos externos con terceros Estados o las oportunas organizaciones internacionales. La política comunitaria en el campo de la cooperación al desarrollo complementa políticas llevadas a cabo por los Estados miembros e incluye disposiciones para combatir la corrupción.

United Nations Convention against Transnational Organized Crime

Article 1
Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2
Use of terms

For the purposes of this Convention:

(a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

(b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) "Property" shall mean 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;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

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

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

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

Article 3
Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(*a*) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(*b*) Serious crime as defined in article 2 of this Convention;

where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(*a*) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

Article 4
Protection of sovereignty

1. States 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.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5
Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 *(a)* (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 *(a)* (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6
Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with 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. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) 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.

Article 7
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and

without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8
Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9
Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention 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.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12
Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

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

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime 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 of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice 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 State Party.

Article 13
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

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

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 *(a)* of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 *(b)* of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State 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 State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

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

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14
Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(*a*) The offence is committed in the territory of that State Party; or

(*b*) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

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

(*a*) The offence is committed against a national of that State Party;

(*b*) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 6, paragraph 1 *(b)* (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 *(a)* (i) or (ii) or *(b)* (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

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

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

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

Article 16
Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 *(a)* or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. 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 States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that 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, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

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

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State 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 or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity

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

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 *(a)* or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

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

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

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

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

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

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. 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 judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

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

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

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

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

16. The requested State 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.

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

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

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

21. 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 State 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 State 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 judicial proceedings under their own jurisdiction;

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

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

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

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State 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 States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States 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.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States 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 19
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in

relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20
Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level 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 States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22
Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23
Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24
Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25
Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26
Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may

consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

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

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28
Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30
Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned

account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31
Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs *(d)* (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 *(d)* and *(e)* of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative

measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35
Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

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

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

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37
Relation with protocols

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol

in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and

Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

EXPOSICIÓN DE MOTIVOS

1. ANTECEDENTES

En su Resolución 53/111, de 9 de diciembre de 1 998, la Asamblea General de las Naciones Unidas decidió establecer un comité especial intergubernamental de composición abierta con la finalidad de elaborar una Convención contra la delincuencia organizada transnacional, complementada mediante tres Protocolos:

– para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños (Protocolo sobre la trata de personas);

– contra el tráfico ilícito de migrantes por tierra, mar y aire (Protocolo sobre el tráfico ilícito de migrantes); y

– contra la fabricación y el tráfico ilícitos de armas de fuego, sus piezas y componentes y municiones (Protocolo sobre las armas de fuego).

La primera sesión formal del comité ad hoc tuvo lugar en Viena en enero de 1 999

En julio de 1 999, la Comisión presentó al Consejo una Recomendación de Decisión del Consejo por la que se le autorizaba a negociar todos los elementos de la Convención contra la delincuencia organizada transnacional y del Protocolo sobre el tráfico ilícito de migrantes que caen dentro de la competencia comunitaria.

A raíz de las recomendaciones de la Comisión, el Consejo autorizó a la Comisión a negociar el proyecto de Convención contra la delincuencia organizada transnacional[13] y el proyecto de Protocolo sobre el tráfico ilícito de migrantes[14].

La Comisión participó activamente en las negociaciones de Naciones Unidas en Viena, en estrecha cooperación con los Estados miembros de la UE y los países del G8 no pertenecientes a la UE. Las negociaciones sobre la Convención contra la delincuencia organizada transnacional se completaron en julio de 2 000, si bien la ultimación del Protocolo sobre el tráfico ilícito de migrantes se prolongó hasta octubre de 2 000. La Asamblea General de las Naciones Unidas aprobó estos instrumentos, en su 55ª Sesión, el 15 de noviembre de 2 000[15] y los declaró abiertos a la firma.

El Gobierno italiano acogió, del 12 al 15 de diciembre de 2 000, una Conferencia política de alto nivel en Palermo con el fin de firmar la Convención contra la delincuencia organizada transnacional y el Protocolo sobre el tráfico ilícito de migrantes. Puesto que la Comisión, de conformidad con las directrices de negociación que se le habían marcado, había negociado con éxito que dichos instrumentos se declararan abiertos a la firma no solo de Estados sino también de organizaciones regionales de integración económica, tales como la CE, el Consejo autorizó la firma, en nombre de la Comunidad Europea, de la Convención contra la delincuencia organizada transnacional y del Protocolo sobre el tráfico ilícito de

---

13 Decisión de 2 de mayo de 2000.

14 Decisión de 14 de febrero de 2000.

15 Resolución de la Asamblea General de las Nacione s Unidas A/RES/55/25.

migrantes durante dicha Conferencia[16]. El 12 de diciembre de 2 000, la Comunidad Europea firmó formalmente estos instrumentos en Palermo, junto con todos los Estados miembros de la UE.

La Convención contra la delincuencia organizada transnacional [entrará] [entró] en vigor el 29 de septiembre de 2 003. El Protocolo sobre el tráfico ilícito de migrantes todavía no ha entrado en vigor, ya que se requiere su ratificación por, como mínimo, 40 Estados. De conformidad con sus disposiciones finales, el Protocolo no puede entrar en vigor antes de la Convención y para ser Parte de un Protocolo, un Estado o una organización regional de integración económica debe ser también Parte de la Convención. Por esa razón, paralelamente al presente documento, se presenta el proyecto de Decisión del Consejo relativa a la celebración, en nombre de la Comunidad Europea, de la Convención contra la delincuencia organizada transnacional.

Una organización regional de integración económica no puede ratificar el Protocolo sobre el tráfico ilícito de migrantes si, por lo menos, uno de sus Estados miembros no lo ha ratificado previamente. De los 15 Estados miembros de la UE, España (el 1º de marzo de 2 002) y Francia (el 29 de octubre de 2 002) han depositado ya un documento de ratificación para la Convención contra la delincuencia organizada transnacional y los Protocolos sobre la trata de personas y el tráfico ilícito de migrantes ante el Secretario General de las Naciones Unidas; los restantes Estados miembros se encuentran aún en curso de ratificación.

2. RESULTADO DE LAS NEGOCIACIONES SOBRE EL PROTOCOLO SOBRE EL TRÁFICO ÍLICITO DE MIGRANTES

La Comisión considera que se han alcanzado plenamente los objetivos fijados por el Consejo en sus directrices de negociación.

El Protocolo sobre el tráfico ilícito de migrantes contiene varias disposiciones que caen dentro de la competencia comunitaria (título IV Tratado CE). Estas disposiciones son, en general, coherentes con el correspondiente acervo comunitairo, en el ámbito del asilo, de la inmigración y las fronteras exteriores y, en especial, con el acervo Schengen, según lo definido en la Decisión del Consejo 1999/435/CE, de 20 de mayo de 1 999[17], y algunas de ellas incluso tienen una redacción idéntica.

La disposición del Protocolo sobre medidas que deben tomarse en las fronteras incluye la posibilidad de reforzar la cooperación entre los organismos de control fronterizo y la imposición de sanciones a los transportistas. Como se prevé en las directrices de negociación, el nivel de estas medidas fronterizas es conforme con el acervo comunitario, en especial el artículo 26 y el apartado 1 del artículo 27 del Convenio de aplicación del Acuerdo de Schengen de 14 de junio de 1 985[18] y la legislación que lo complementa[19]. De conformidad con las directrices de negociación, el Protocolo también contiene disposiciones por las que se exige a las Partes Contratantes controlar la seguridad y la calidad de sus documentos de viaje e

---

16 Decisión del Consejo 2001/87/CE, DO L 30 de 1.2.2001, p. 44.
17 DO L 176 de 10 de julio de 1999, p. 1.
18 DO L 239 de 22 de septiembre de 2000, p. 19.
19 Directiva 2001/51/CE del Consejo, de 28 de junio de 2001, DO L 187 de 10 de julio de 2001, p. 45.

identidad, incluido el visado, y verificar la legitimidad y validez de tales documentos cuando existan sospechas de se estén utilizando para los fines de trata de personas y tráfico ilícito de migrantes. Esta obligación se ajusta al acervo comunitario, en especial, al Reglamento (CE) N° 1683/95 del Consejo[20], una vez modificado por el Reglamento (CE) N° 334/2002[21], sobre un modelo uniforme de visado. El Protocolo también incluye una cláusula de salvaguardia por la que se especifica que las disposiciones del Protocolo se entienden sin perjuicio de las obligaciones de los Estados con arreglo al Derecho internacional, incluida la Convención de Ginebra de 1 951 y el Protocolo de 1 967 sobre el Estatuto de los Refugiados, así como el principio de no devolución consagrado en dichos instrumentos. Aunque la CE no sea Parte de dicha Convención, está vinculada por su contenido, en particular, en virtud del punto 1 del artículo 63 del Tratado CE.

Por último, las obligaciones impuestas por el Protocolo a los Estados respecto de la facilitación y aceptación del retorno y de la repatriación de las personas que sean sus propios ciudadanos o tengan un derecho de residencia permanente en su territorio coincide con las negociaciones que la Comunidad está actualmente llevando a cabo para la celebración de acuerdos con terceros países sobre la readmisión de personas que hayan entrado o residan ilegalmente en los territorios de los Estados miembros.

3. POSICIÓN ESPECIAL DEL REINO UNIDO, IRLANDA Y DINAMARCA

Las disposiciones del Protocolo sobre el tráfico ilícito de migrantes que son competencia de la Comunidad, caen dentro del ámbito de aplicación de la parte III, título IV del Tratado constitutivo de la Comunidad Europea.

De conformidad con el artículo 1 del Protocolo sobre la posición del Reino Unido y de Irlanda, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, el Reino Unido e Irlanda no estarán vinculados por dichas disposiciones como parte de la Comunidad, salvo que estos países ejerzan un derecho de inclusión («opt in») en las condiciones que establece el Protocolo.

De conformidad con los artículos 1 y 2 del Protocolo sobre la posición de Dinamarca, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, Dinamarca no esta vinculada por dichas disposiciones como parte de la Comunidad.

4. CONCLUSIONES

El Protocolo sobre el tráfico ilícito de migrantes es el primer instrumento global de lucha contra la delincuencia organizada transnacional y el tráfico ilícito de migrantes. Establece para todos los Estados participantes un marco multilateral de gran utilidad y una serie de importantes normas mínimas. Por lo tanto, la Comunidad Europea está muy interesada en que entre en vigor lo más rápidamente posible. Al completarse el proceso de ratificación por la Comunidad Europea se está enviando una clara señal de que la Comunidad está comprometida con los objetivos de dicho instrumento.

---

[20] DO L 164 de 14 de julio de 1995, p. 1.

[21] DO L 53 de 23 de febrero de 2002, p. 7

La propuesta de Decisión del Consejo adjunta constituye el instrumento jurídico de celebración del Protocolo sobre el tráfico ilícito de migrantes, la base jurídica para lo cual puede encontrarse en los artículos 62 y 63, en relación con el artículo 300 del Tratado CE. La propuesta contiene un primer artículo por el que se aprueba el Protocolo en nombre de la Comunidad Europea. El segundo artículo autoriza al Presidente del Consejo a designar a la persona habilitada para depositar, en nombre de la Comunidad Europea, el instrumento de aprobación. El texto del Protocolo figura como anexo I. El anexo II comprende la declaración sobre el alcance de la competencia de la Comunidad Europea con respecto a las cuestiones regidas por el Protocolo que hay que depositar junto con el instrumento de aprobación (apartado 3 del artículo 21 del Protocolo sobre el tráfico ilícito de migrantes).

El Consejo decidirá por mayoría cualificada, previa consulta al Parlamento Europeo (primer párrafo del apartado 2 del artículo 300, en relación con el artículo 67 del tratado CE, y primer párrafo del apartado 3 del artículo 300 del Tratado CE).

La Comisión propone, en consecuencia, que el Consejo adopte la Decisión adjunta.

2003/0196 (CNS)

Propuesta de

DECISIÓN DEL CONSEJO

relativa a la celebración, en nombre de la Comunidad Europea, del Protocolo contra el tráfico ilícito de migrantes por tierra, mar y aire, que complementa la Convención de las Naciones Unidas contra la delincuencia organizada

EL CONSEJO DE LA UNIÓN EUROPEA,

Visto el Tratado constitutivo de la Comunidad Europea, y, en particular, el punto 2 de su artículo 62 y el punto 3 de su artículo 63, en relación con el primer párrafo del apartado 2 de su artículo 300 y el primer párrafo del apartado 3 de su artículo 300,

Vista la propuesta de la Comisión,[22]

Visto el dictamen del Parlamento Europeo[23]:

Considerando lo siguiente:

(1) Tras haber sido autorizada por el Consejo, la Comisión ha negociado, en nombre de la Comunidad, los elementos del Protocolo que son de competencia comunitaria.

(2) El Consejo ha dado instrucciones a la Comisión para que negocie la adhesión de la Comunidad a este acuerdo internacional.

(3) La negociación ha concluido y los instrumentos resultantes se firmaron por la Comunidad el 12 de diciembre de 2 000 de conformidad con la Decisión del Consejo (2001/87/CE) de 8 de diciembre de 2 000[24] .

(4) Algunos Estados miembros son Parte del Protocolo mientras que el proceso de ratificación está en curso en otros Estados miembros.

(5) Las disposiciones del Protocolo que son competencia de la Comunidad caen dentro del ámbito de aplicación de la parte III, título IV del Tratado constitutivo de la Comunidad Europea.

(6) De conformidad con el artículo 1 [artículo 3] del Protocolo sobre la posición del Reino Unido y de Irlanda, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, el Reino Unido e Irlanda [participan] [no participan] en la adopción de la presente Decisión y consiguientemente [estarán] [no estarán] vinculados por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad.

(7) De conformidad con los artículos 1 y 2 del Protocolo sobre la posición de Dinamarca, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad

---

22 DO, p.
23 DO, p.
24 DO L 30 de 1.2.2001, p. 44..

Europea, Dinamarca no estará vinculada por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad.

(8) La celebración de la Convención se ha aprobado, en nombre de la Comunidad Europea, por la Decisión /.../.../CE) de ...[25], lo que es condición para que la Comunidad Europea sea Parte del Protocolo, de conformidad con el apartado 2 del artículo 37 de la Convención.

(9) Se han cumplido las condiciones para que la Comunidad deposite el instrumento de aprobación establecidas en el apartado 3 del artículo 36 de la Convención y el apartado 3 del artículo 21 del Protocolo.

(10) El Protocolo debe ser aprobado para que la Comunidad pueda llegar a ser Parte del mismo dentro de los límites de su competencia,

(11) Al depositar el instrumento de aprobación, la Comunidad debe depositar también una declaración sobre el alcance de la competencia de la Comunidad Europea con respecto a las cuestiones regidas por el Protocolo, de conformidad con el apartado 3 del artículo 21 del Protocolo sobre el tráfico ilícito de migrantes.

DECIDE:

Artículo 1

Se aprueba, en nombre de la Comunidad Europea, el Protocolo contra el tráfico ilícito de migrantes por tierra, mar y aire, que complementa la Convención de las Naciones Unidas contra la delincuencia organizada, tal como se establece en el anexo I.

El instrumento de confirmación formal de la Comunidad comprenderá una declaración de competencia de conformidad con el apartado 3 del artículo 21 del Protocolo, tal como se establece en el anexo II.

Artículo 2

Se autoriza al Presidente del Consejo a designar a la persona habilitada para depositar el instrumento de confirmación formal con el fin de vincular la Comunidad.

La presente Decisión se publicará en *el Diario Oficial de la Unión Europea*.

Hecho en Bruselas,

por el Consejo,
el Presidente

[25] DO, p.

ANEXOS

El ANEXO I incluirá el texto del Protocolo.

ANEXO II

DECLARACIÓN SOBRE LA COMPETENCIA DE LA COMUNIDAD EUROPEA CON RESPECTO A LAS CUESTIONES REGIDAS POR EL PROTOCOLO CONTRA EL TRÁFICO ILÍCITO DE MIGRANTES POR TIERRA, MAR Y AIRE QUE COMPLEMENTA LA CONVENCIÓN DE LAS NACIONES UNIDAS CONTRA LA DELINCUENCIA ORGANIZADA

El apartado 3 del artículo 21 del Protocolo establece que el instrumento de adhesión de una organización regional de integración económica contendrá una declaración en la que se especificarán las cuestiones regidas por la Convención con respecto a las cuales se haya transferido la competencia a la organización por aquellos de sus Estados miembros que sean Parte del Protocolo.

El Protocolo contra el tráfico ilícito de migrantes por tierra, mar y aire se aplicará, por lo que se refiere a las competencias transferidas a la Comunidad Europea, a los territorios a los que se aplica el Tratado constitutivo de la Comunidad Europea y bajo las condiciones establecidas en dicho Tratado, en particular, su artículo 299.

De conformidad con el artículo 1 [artículo 3] del Protocolo sobre la posición del Reino Unido y de Irlanda, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, el Reino Unido e Irlanda [no estarán] [estarán] vinculados por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad. Consiguientemente, la presente Declaración [no es] [es] aplicable a los territorios del Reino Unido e Irlanda.

De conformidad con los artículos 1 y 2 del Protocolo sobre la posición de Dinamarca, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, Dinamarca no estará vinculada por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad

De conformidad con el artículo 299, la presente Declaración no es aplicable a los territorios de los Estados miembros en que dicho Tratado no se aplica y se entiende sin perjuicio de los actos o posiciones que puedan adoptar al amparo del Protocolo los Estados miembros de que se trate en nombre de dichos territorios y en su interés. De conformidad con las disposiciones mencionadas anteriormente, la presente Declaración indica la competencia que los Estados miembros han transferido a la Comunidad, de conformidad con los Tratados, en las cuestiones regidas por el Protocolo. El alcance y el ejercicio de tal competencia comunitaria están, por su propia naturaleza, sujetos a evolución continua, de modo que la Comunidad completará o modificará la presente declaración, de ser necesario, de conformidad con el apartado 3 del artículo 21 del Protocolo.

La Comunidad señala que tiene competencia respecto del cruce de las fronteras exteriores de los Estados miembros, el establecimiento de procedimientos y normas en relación con la práctica de controles sobre las personas en dichas fronteras y la regulación sobre visados para estancias no superiores a tres meses. La Comunidad es, asimismo, competente respecto de las medidas de política de migración relativas a las condiciones de entrada y residencia y las medidas para combatir la inmigración y residencia ilegales, incluida la repatriación de

residentes ilegales. La normativa comunitaria correspondiente forma parte del acervo Schengen sobre fronteras exteriores y documentos de viaje e identidad, tal como se integra del marco de la Comunidad Europea, y de su desarrollo futuro. Por consiguiente, en estos ámbitos, corresponde a la Comunidad adoptar las normas y reglamentos pertinentes y figura entre sus competencias la de asumir compromisos externos con terceros Estados o las oportunas organizaciones internacionales.

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1
Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2
Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3
Use of terms

For the purposes of this Protocol:

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4
Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5
Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

(a) The smuggling of migrants;

(b) When committed for the purpose of enabling the smuggling of migrants:

(i) Producing a fraudulent travel or identity document;

(ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence

established in accordance with paragraph 1 of this article;
(b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;
(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.
3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:
(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.
4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. Smuggling of migrants by sea

Article 7
Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8
Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.
2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:
(a) To board the vessel;
(b) To search the vessel; and
(c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.
3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.
4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.
5. A flag State may, consistent with article 7 of this Protocol, subject its authorization

to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9
Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(a) Ensure the safety and humane treatment of the persons on board;

(b) Take due account of the need not to endanger the security of the vessel or its cargo;

(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10
Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group

engaged in conduct set forth in article 6 of this Protocol;
(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;
(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;
(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.
2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11
Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:
(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14
Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.
2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:
(a) Improving the security and quality of travel documents;
(b) Recognizing and detecting fraudulent travel or identity documents;
(c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;
(d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and
(e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.
3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15
Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.
2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.
3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16
Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.
3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations,[5] where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17
Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:
(a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
(b) Enhancing the provisions of this Protocol among themselves.

Article 18
Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.
4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other

---

[5] Ibid., vol. 596, Nos. 8638–8640.

authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19
Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention3 and the 1967 Protocol4 relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of nondiscrimination.

Article 20
Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

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

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

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or

approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

EXPOSICIÓN DE MOTIVOS

1. ANTECEDENTES

En su Resolución 53/111, de 9 de diciembre de 1 998, la Asamblea General de las Naciones Unidas decidió establecer un comité especial intergubernamental de composición abierta con la finalidad de elaborar una Convención contra la delincuencia organizada transnacional, complementada mediante tres Protocolos:

– para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños (Protocolo sobre la trata de personas);

– contra el tráfico ilícito de migrantes por tierra, mar y aire (Protocolo sobre el tráfico ilícito de migrantes); y

– contra la fabricación y el tráfico ilícitos de armas de fuego, sus piezas y componentes y municiones (Protocolo sobre las armas de fuego).

La primera sesión formal del comité ad hoc tuvo lugar en Viena en enero de 1 999

En julio de 1 999, la Comisión presentó al Consejo una Recomendación de Decisión del Consejo por la que se le autorizaba a negociar todos los elementos de la Convención contra la delincuencia organizada transnacional y del Protocolo sobre la trata de personas que caen dentro de la competencia comunitaria.

A raíz de las recomendaciones de la Comisión, el Consejo autorizó a la Comisión a negociar el proyecto de Convención contra la delincuencia organizada transnacional[26] y el proyecto de Protocolo sobre la trata de personas[27].

La Comisión participó activamente en las negociaciones de Naciones Unidas en Viena, en estrecha cooperación con los Estados miembros de la UE y los países del G8 no pertenecientes a la UE. Las negociaciones sobre la Convención contra la delincuencia organizada transnacional se completaron en julio de 2 000, si bien la ultimación del Protocolo sobre la trata de personas se prolongó hasta octubre de 2 000. La Asamblea General de las Naciones Unidas aprobó estos instrumentos, en su 55ª Sesión, el 15 de noviembre de 2 000[28] y los declaró abiertos a la firma.

El Gobierno italiano acogió, del 12 al 15 de diciembre de 2 000, una Conferencia política de alto nivel en Palermo con el fin de firmar la Convención contra la delincuencia organizada transnacional y el Protocolo sobre la trata de personas. Puesto que la Comisión, de conformidad con las directrices de negociación que se le habían marcado, había negociado con éxito que dichos instrumentos se declararan abiertos a la firma no solo de Estados sino también de organizaciones regionales de integración económica, tales como la CE, el Consejo autorizó la firma, en nombre de la Comunidad Europea, de la Convención contra la delincuencia organizada transnacional y del Protocolo sobre la trata de personas durante dicha Conferencia[29].

---

26 Decisión de 2 de mayo de 2000.

27 Decisión de 14 de febrero de 2000.

28 Resolución de la Asamblea General de las Nacione s Unidas A/RES/55/25.

29 Decisión del Consejo 2001/87/CE, DO L 30 de 1.2.2001, p. 44.

El 12 de diciembre de 2 000, la Comunidad Europea firmó formalmente estos instrumentos en Palermo, junto con todos los Estados miembros de la UE.

La Convención contra la delincuencia organizada transnacional [entrará] [entró] en vigor el 29 de septiembre de 2 003. El Protocolo sobre la trata de personas todavía no ha entrado en vigor, ya que se requiere su ratificación por, como mínimo, 40 Estados. De conformidad con sus disposiciones finales, el Protocolo no puede entrar en vigor antes de la Convención y para ser Parte de un Protocolo, un Estado o una organización regional de integración económica debe ser también Parte de la Convención. Por esa razón, paralelamente al presente documento, se presenta el proyecto de Decisión del Consejo relativa a la celebración, en nombre de la Comunidad Europea, de la Convención contra la delincuencia organizada transnacional.

Una organización regional de integración económica no puede ratificar el Protocolo sobre la trata de personas si, por lo menos, uno de sus Estados miembros no lo ha ratificado previamente. De los 15 Estados miembros de la UE, España (el 1º de marzo de 2 002) y Francia (el 29 de octubre de 2 002) han depositado ya un documento de ratificación para la Convención contra la delincuencia organizada transnacional y los Protocolos sobre la trata de personas y el tráfico ilícito de migrantes ante el Secretario General de las Naciones Unidas; los restantes Estados miembros se encuentran aún en curso de ratificación.

2. RESULTADO DE LAS NEGOCIACIONES SOBRE EL PROTOCOLO SOBRE LA TRATA DE PERSONAS

La Comisión considera que se han alcanzado plenamente los objetivos fijados por el Consejo en sus directrices de negociación.

El Protocolo sobre la trata de personas contiene varias disposiciones que caen dentro de la competencia comunitaria (título IV Tratado CE). Estas disposiciones son, en general, coherentes con el correspondiente acervo comunitairo, en el ámbito del asilo, de la inmigración y las fronteras exteriores y, en especial, con el acervo Schengen, según lo definido en la Decisión del Consejo 1999/435/CE, de 20 de mayo de 1 999[30], y algunas de ellas incluso tienen una redacción idéntica.

La disposición del Protocolo sobre medidas que deben tomarse en las fronteras incluye la posibilidad de reforzar la cooperación entre los organismos de control fronterizo y la imposición de sanciones a los transportistas. Como se prevé en las directrices de negociación, el nivel de estas medidas fronterizas es conforme con el acervo comunitario, en especial el artículo 26 y el apartado 1 del artículo 27 del Convenio de aplicación del Acuerdo de Schengen de 14 de junio de 1 985[31] y la legislación que lo complementa[32]. De conformidad con las directrices de negociación, el Protocolo también contiene disposiciones por las que se exige a las Partes Contratantes controlar la seguridad y la calidad de sus documentos de viaje e identidad, incluido el visado, y verificar la legitimidad y validez de tales documentos cuando existan sospechas de se estén utilizando para los fines de trata de personas y

30 DO L 176 de 10 de julio de 1999, p. 1.

31 DO L 239 de 22 de septiembre de 2000, p. 19.

32 Directiva 2001/51/CE del Consejo, de 28 de junio de 2001, DO L 187 de 10 de julio de 2001, p. 45.

tráfico ilícito de migrantes. Esta obligación se ajusta al acervo comunitario, en especial, al Reglamento (CE) N° 1683/95 del Consejo[33], una vez modificado por el Reglamento (CE) N° 334/2002[34], sobre un modelo uniforme de visado. El Protocolo también incluye una cláusula de salvaguardia por la que se especifica que las disposiciones del Protocolo se entienden sin perjuicio de las obligaciones de los Estados con arreglo al Derecho internacional, incluida la Convención de Ginebra de 1 951 y el Protocolo de 1 967 sobre el Estatuto de los Refugiados, así como el principio de no devolución consagrado en dichos instrumentos. Aunque la CE no sea Parte de dicha Convención, está vinculada por su contenido, en particular, en virtud del punto 1 del artículo 63 del Tratado CE.

Por último, las obligaciones impuestas por el Protocolo a los Estados respecto de la facilitación y aceptación del retorno y de la repatriación de las personas que sean sus propios ciudadanos o tengan un derecho de residencia permanente en su territorio coincide con las negociaciones que la Comunidad está actualmente llevando a cabo para la celebración de acuerdos con terceros países sobre la readmisión de personas que hayan entrado o residan ilegalmente en los territorios de los Estados miembros.

3. POSICIÓN ESPECIAL DEL REINO UNIDO, IRLANDA Y DINAMARCA

Las disposiciones del Protocolo sobre la trata de personas que son competencia de la Comunidad, caen dentro del ámbito de aplicación de la parte III, título IV del Tratado constitutivo de la Comunidad Europea.

De conformidad con el artículo 1 del Protocolo sobre la posición del Reino Unido y de Irlanda, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, el Reino Unido e Irlanda no estarán vinculados por dichas disposiciones como parte de la Comunidad, salvo que estos países ejerzan un derecho de inclusión («opt in») en las condiciones que establece el Protocolo.

De conformidad con los artículos 1 y 2 del Protocolo sobre la posición de Dinamarca, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, Dinamarca no estará vinculada por dichas disposiciones como parte de la Comunidad.

4. CONCLUSIONES

El Protocolo sobre la trata de personas es el primer instrumento global de lucha contra la delincuencia organizada transnacional y la trata de personas. Establece para todos los Estados participantes un marco multilateral de gran utilidad y una serie de importantes normas mínimas. Por lo tanto, la Comunidad Europea está muy interesada en que entre en vigor lo más rápidamente posible. Al completarse el proceso de ratificación por la Comunidad Europea se está enviando una clara señal de que la Comunidad está comprometida con los objetivos de dicho instrumento.

La propuesta de Decisión del Consejo adjunta constituye el instrumento jurídico de celebración del Protocolo sobre la trata de personas, la base jurídica para lo cual

---

[33] DO L 164 de 14 de julio de 1995, p. 1.
[34] DO L 53 de 23 de febrero de 2002, p. 7.

puede encontrarse en los artículos 62 y 63, en relación con el artículo 300 del Tratado CE. La propuesta contiene un primer artículo por el que se aprueba el Protocolo en nombre de la Comunidad Europea. El segundo artículo autoriza al Presidente del Consejo a designar a la persona habilitada para depositar, en nombre de la Comunidad Europea, el instrumento de aprobación. El texto del Protocolo figura como anexo I. El anexo II comprende la declaración sobre el alcance de la competencia de la Comunidad Europea con respecto a las cuestiones regidas por el Protocolo que hay que depositar junto con el instrumento de aprobación (apartado 3 del artículo 16 del Protocolo sobre la trata de personas).

El Consejo decidirá por mayoría cualificada, previa consulta al Parlamento Europeo (primer párrafo del apartado 2 del artículo 300, en relación con el artículo 67 del tratado CE, y primer párrafo del apartado 3 del artículo 300 del Tratado CE).

La Comisión propone, en consecuencia, que el Consejo adopte la Decisión adjunta.

2003/0197 (CNS)

Propuesta de

DECISIÓN DEL CONSEJO

relativa a la celebración, en nombre de la Comunidad Europea, del Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños, que complementa la Convención de las Naciones Unidas contra la delincuencia organizada

EL CONSEJO DE LA UNIÓN EUROPEA,

Visto el Tratado constitutivo de la Comunidad Europea, y, en particular, el punto 2 de su artículo 62 y el punto 3 de su artículo 63, en relación con el primer párrafo del apartado 2 de su artículo 300 y el primer párrafo del apartado 3 de su artículo 300,

Vista la propuesta de la Comisión,[35]

Visto el dictamen del Parlamento Europeo[36]:

Considerando lo siguiente:

(1) Tras haber sido autorizada por el Consejo, la Comisión ha negociado, en nombre de la Comunidad, los elementos del Protocolo que son de competencia comunitaria.

(2) El Consejo ha dado instrucciones a la Comisión para que negocie la adhesión de la Comunidad a este acuerdo internacional.

(3) La negociación ha concluido y los instrumentos resultantes se firmaron por la Comunidad el 12 de diciembre de 2 000 de conformidad con la Decisión del Consejo (2001/87/CE) de 8 de diciembre de 2 000[37].

(4) Algunos Estados miembros son Parte del Protocolo mientras que el proceso de ratificación está en curso en otros Estados miembros.

(5) Las disposiciones del Protocolo que son competencia de la Comunidad caen dentro del ámbito de aplicación de la parte III, título IV del Tratado constitutivo de la Comunidad Europea.

(6) De conformidad con el artículo 1 [artículo 3] del Protocolo sobre la posición del Reino Unido y de Irlanda, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, el Reino Unido e Irlanda [participan] [no participan] en la adopción de la presente Decisión y consiguientemente [estarán] [no estarán] vinculados por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad.

(7) De conformidad con los artículos 1 y 2 del Protocolo sobre la posición de Dinamarca, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad

---

35 DO, p.

36 DO, p.

37 DO L 30 de 1.2.2001, p. 44..

Europea, Dinamarca no estará vinculada por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad.

(8) La celebración de la Convención se ha aprobado, en nombre de la Comunidad Europea, por la Decisión /.../.../CE) de ...[38], lo que es condición para que la Comunidad Europea sea Parte del Protocolo, de conformidad con el apartado 2 del artículo 37 de la Convención.

(9) Se han cumplido las condiciones para que la Comunidad deposite el instrumento de aprobación establecidas en el apartado 3 del artículo 36 de la Convención y el apartado 3 del artículo 16 del Protocolo.

(10) El Protocolo debe ser aprobado para que la Comunidad pueda llegar a ser Parte del mismo dentro de los límites de su competencia,

(11) Al depositar el instrumento de aprobación, la Comunidad debe depositar también una declaración sobre el alcance de la competencia de la Comunidad Europea con respecto a las cuestiones regidas por el Protocolo, de conformidad con el apartado 3 del artículo 16 del Protocolo sobre la trata de personas.

DECIDE:

Artículo 1

Se aprueba, en nombre de la Comunidad Europea, el Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños, que complementa la Convención de las Naciones Unidas contra la delincuencia organizada, tal como se establece en el anexo I.

El instrumento de confirmación formal de la Comunidad comprenderá una declaración de competencia de conformidad con el apartado 3 del artículo 16 del Protocolo, tal como se establece en el anexo II.

Artículo 2

Se autoriza al Presidente del Consejo a designar a la persona habilitada para depositar el instrumento de confirmación formal con el fin de vincular la Comunidad.

La presente Decisión se publicará en *el Diario Oficial de la Unión Europea*.

Hecho en Bruselas,

por el Consejo,
el Presidente

[38] DO, p.

ANEXOS

El ANEXO I incluirá el texto del Protocolo.

ANEXO II

DECLARACIÓN SOBRE LA COMPETENCIA DE LA COMUNIDAD EUROPEA CON RESPECTO A LAS CUESTIONES REGIDAS POR EL PROTOCOLO PARA PREVENIR, REPRIMIR Y SANCIONAR LA TRATA DE PERSONAS, ESPECIALMENTE MUJERES Y NIÑOS, QUE COMPLEMENTA LA CONVENCIÓN DE LAS NACIONES UNIDAS CONTRA LA DELINCUENCIA ORGANIZADA

El apartado 3 del artículo 16 del Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños establece que el instrumento de ratificación, aceptación o aprobación de una organización regional de integración económica contendrá una declaración en la que se especificarán las cuestiones regidas por la Convención con respecto a las cuales se haya transferido la competencia a la organización por aquellos de sus Estados miembros que sean Parte del Protocolo.

El Protocolo para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños se aplicará, por lo que se refiere a las competencias transferidas a la Comunidad Europea, a los territorios a los que se aplica el Tratado constitutivo de la Comunidad Europea y bajo las condiciones establecidas en dicho Tratado, en particular, su artículo 299.

De conformidad con el artículo 1 [artículo 3] del Protocolo sobre la posición del Reino Unido y de Irlanda, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, el Reino Unido e Irlanda [no estarán] [estarán] vinculados por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad. Consiguientemente, la presente Declaración [no es] [es] aplicable a los territorios del Reino Unido e Irlanda.

De conformidad con los artículos 1 y 2 del Protocolo sobre la posición de Dinamarca, anejo al Tratado de la Unión Europea y al Tratado constitutivo de la Comunidad Europea, Dinamarca no estará vinculada por las disposiciones del Protocolo que son de competencia comunitaria como parte de la Comunidad

De conformidad con el artículo 299, la presente Declaración no es aplicable a los territorios de los Estados miembros en que dicho Tratado no se aplica y se entiende sin perjuicio de los actos o posiciones que puedan adoptar al amparo del Protocolo los Estados miembros de que se trate en nombre de dichos territorios y en su interés. De conformidad con las disposiciones mencionadas anteriormente, la presente Declaración indica la competencia que los Estados miembros han transferido a la Comunidad, de conformidad con los Tratados, en las cuestiones regidas por el Protocolo. El alcance y el ejercicio de tal competencia comunitaria están, por su propia naturaleza, sujetos a evolución continua, de modo que la Comunidad completará o modificará la presente declaración, de ser necesario, de conformidad con el apartado 3 del artículo 16 del Protocolo.

La Comunidad señala que tiene competencia respecto del cruce de las fronteras exteriores de los Estados miembros, el establecimiento de procedimientos y normas en relación con la práctica de controles sobre las personas en dichas fronteras y la regulación sobre visados para estancias no superiores a tres meses. La Comunidad es asimismo competente respecto de las medidas de política de migración relativas a las condiciones de entrada y residencia y las

medidas para combatir la inmigración y residencia ilegales, incluida la repatriación de residentes ilegales. La normativa comunitaria correspondiente forma parte del acervo Schengen sobre fronteras exteriores y documentos de viaje e identidad, tal como se integra del marco de la Comunidad Europea, y de su desarrollo futuro. Por consiguiente, en estos ámbitos, corresponde a la Comunidad adoptar las normas y reglamentos pertinentes y figura entre sus competencias la de asumir compromisos externos con terceros Estados o las oportunas organizaciones internacionales.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1
Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2
Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3
Use of terms

For the purposes of this Protocol:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* of this article shall be irrelevant where any of the means set forth in subparagraph *(a)* have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph *(a)* of this article;

(d) "Child" shall mean any person under eighteen years of age.

Article 4
Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims

of such offences.

Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6
Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer

victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7
Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8
Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9
Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10
Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11
Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14
Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[3] and the 1967 Protocol[4] relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

---

[3] United Nations, *Treaty Series*, vol. 189, No. 2545

[4] Ibid., vol. 606, No. 8791.

Article 15
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

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

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

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter

into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.