

SAARC CONVENTION ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

THE MEMBER STATES OF THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC)

MINDFUL of the principles of cooperation enshrined in the SAARC Charter;

RECALLING that at the Islamabad Summit on December 29-31, 1988, Heads of State or Government of the Member States of SAARC expressed grave concern over the growing magnitude and the serious effect of drug abuse and drug trafficking and recognised the need for urgent and effective measures to eradicate this problem including the possibility of concluding a Regional Convention on Drug Control;

RECOGNISING that a regional Convention on Narcotic Drugs and Psychotropic Substances would be a step forward in augmenting SAARC efforts to eliminate drug trafficking;

ALSO RECOGNISING the need to re-enforce and supplement, at the regional level, the measures provided in the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 1972, the Convention on Psychotropic Substances, 1971, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, taking into account concerns which are specific to the SAARC region;

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

TAKING COGNIZANCE of the links between illicit drug trafficking and other related organised criminal activities, which undermine the economies and threaten the stability, security and sovereignty of States;

CONVINCED of the importance of strengthening and enhancing effective legal means for regional cooperation in criminal matters for suppressing international criminal activities of illicit traffic in narcotic drugs and psychotropic substances;

HAVE AGREED AS FOLLOWS:

Article I **DEFINITIONS**

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

- (a) "Cannabis plant" means any plant of the genus Cannabis;
- (b) "Coca Bush" means the plant of any species of the genus Erythroxylon;
- (c) "Confiscation" which includes forfeiture where applicable; means the permanent deprivation of property by order of a court or other competent authority;
- (d) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances listed in Table I and Table 11 annexed to the 1988 U.N. Convention, or substances substituted for them, to pass out of; through or into the territory of one or more countries, with the knowledge and under the

supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with Article 3, paragraph 1 of this Convention;

- (e) "1961 Convention" means the Single Convention on Narcotic Drugs, 1961;
- (f) "1961 Convention as amended" means the Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961;
- (g) "1971 Convention" means the Convention on Psychotropic Substances, 1971;
- (h) "1988 U.N Convention" means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988;
- (i) "Freeze" or "Seize" means to temporarily prohibit the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;
- (j) "Illicit traffic" means the offences set forth in Article 3, of this Convention;
- (k) "Narcotic Drug" means any or the substances, natural or synthetic, listed in Schedules I and II of the 1961 Convention and the 1961 Convention as amended;
- (l) "Opium poppy" means the plant of the species *Papaver Somniferum* L;
- (m) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission or an offence established in accordance with Article 3, paragraph 1 of this convention;
- (n) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (o) "Psychotropic Substance" means any substance natural or synthetic or any natural material listed in Schedules I, II, III and IV of the 1971 Convention;
- (p) "Secretary-General" means the Secretary-General of the South Asian Association for Regional Cooperation (SAARC).

Article 2

SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote cooperation among Member States, so that they may address more effectively the various aspects of prevention and control of drug abuse and the suppression of illicit traffic in narcotic drugs and psychotropic substances, which are specific to the SAARC region,

2. Member States in carrying out their obligations under this Convention shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

3. Member States 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

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

Article 3 OFFENCES

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

- (a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, The 1961 Convention as amended or the 1971 Convention;
- (b) the cultivation of opium poppy, coca bush or cannabis plant for the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
- (c) the possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (a) above;
- (d) the manufacture, transport or distribution of equipment or materials, or of substances as listed in Table I and Table II of the 1988 U.N. Convention, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
- (e) the organisation, management or financing or any of the offences enumerated in (a), (b), (c) or (d) above;
- (f) the conversion or transfer of property, knowing that such property is derived from the proceeds from any offence or offences established in accordance with sub-paragraph (a), (b), (c), (d) or (e) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- (g) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with sub-paragraph (a), (b), (c), (d) or (e) of this paragraph or from an act of participation in such an offence or offences;
- (h) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with sub-paragraph (a), (b), (c), (d) or (e) of this paragraph or from an act of participation in such offence or offences;
- (i) the possession of equipment or materials, or of substances listed in Table I and Table II, of the 1988 U.N. Convention knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
- (j) publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this Article or to use narcotic drugs or psychotropic substances illicitly;

- (k) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Article.

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

Article 4 SANCTIONS

1. Each Member State shall make the commission or the offences established in accordance with Article 3 punishable by appropriate penalties, which take into account their grave nature.

2. The Member States may provide in addition to conviction or punishment for an offence established in accordance with Article 3, paragraph 1 that the offender shall undergo measures such as treatment, education, after-care, rehabilitation or social re-integration.

3. Notwithstanding anything contained in the preceding paragraphs, in appropriate cases of a minor nature, the Member States may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social re-integration, as well as, when the offender is a drug abuser, treatment and after-care.

4. The Member States shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with Article 3, paragraph 1 particularly serious, such as

- (a) the involvement in the offence of an organised criminal group to which the offender belongs;
- (b) the involvement of the offender in other international organised criminal activities;
- (c) the involvement of the offender in other illegal activities facilitated by commission of the offence;
- (d) the use of violence or arms by the offender;
- (e) the fact that the offender holds a public office and that the offence is connected with the office in question;
- (f) the victimisation or use of minors;
- (g) the fact That the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;
- (h) prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Member State.

5. The Member States shall also ensure that their courts or other competent authorities bear in mind the serious nature of the offences established in accordance with Article 3, paragraph 1 or the circumstances enumerated in paragraph 4 of this Article, when considering the eventuality of early release or parole of persons convicted for such offences.

Article 5
JURISDICTION

1. Each Member State shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with Article 3, paragraph 1 when:

- (a) the offence is committed in its territory;
- (b) the offence is committed on board a vessel flying its flag or an aircraft, which is registered under its laws at the time the offence, is committed;
- (c) the offence is committed by one of its nationals or by a person who has his habitual residence in that territory;
- (d) the offence is one of those established in accordance with Article 3, paragraph 1(k) and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with Article 3, paragraph 1.

2. Each Member State may likewise take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with Article 3, paragraph 1, in cases where the alleged offender is present in its territory and it does not extradite him to another Member State.

3. This Convention does not exclude the exercise or any criminal jurisdiction established by a Member State in accordance with domestic law.

Article 6
PROVISION OF INFORMATION

1. The Member State in which any or the offences established in accordance with Article 3, paragraph 1, has been committed shall, if it has reason to believe that, an alleged offender had fled from its territory, communicate to all other States concerned all the pertinent facts regarding the offence committed and all available information regarding the identity of the alleged offender.

2. Upon being satisfied that the circumstances so warrant, the Member State in whose territory the alleged offender is present shall take appropriate measures under its domestic law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified, without delay to:

- (a) the State where the offence was committed; and
- (b) the State or States of which the alleged offender is a national or if he is a stateless person in whose territory he permanently resides.

Article 7
PROSECUTION

The Member State in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of that State.

Article 8
EXTRADITION

1. To the extent that the offences established in accordance with Article 3, paragraph 1, are not listed as extraditable offences in any Extradition Treaty existing between Member States, they shall be deemed to be included as such therein.

2. Member States undertake to include the offences established in accordance with Article 3, paragraph 1, as extraditable offences in every future Extradition Treaty to be concluded between them.
3. If a Member State which makes extradition conditional on the existence of a Treaty receives a request for extradition from another Member State with which it has no Extradition Treaty, the requested State may, at its option, consider this Convention as the basis for extradition in respect of the offences established in accordance with Article 3, paragraph 1.
4. Member States which do not make extradition conditional on the existence of a Treaty, shall recognise the offences established in accordance with Article 3, paragraph 1, as extraditable offences between themselves.
5. Extradition shall be subject to the law of the requested State.

Article 9
NON-FISCAL AND NON-POLITICAL OFFENCES

The offences established in accordance with Article 3, paragraph shall not be regarded as fiscal offences or as political offences or as offences connected with a political offence or as offences inspired by political motives, without prejudice to the constitutional limitations and the fundamental domestic law of the Member States.

Article 10
CONFISCATION

1. Each Member State shall adopt such measures as may be necessary to enable the confiscation of:
 - (a) Proceeds derived from offences established in accordance with Article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;
 - (b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with Article 3.
2. Each Member State shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 or this Article for the purpose of eventual confiscation.

Article 11
MUTUAL LEGAL ASSISTANCE

1. The Member States shall afford one another pursuant to this Article, the widest measures of mutual legal assistance in investigations prosecutions and judicial proceedings in relation to criminal offences established in accordance with Article 3, paragraph 1.
2. Mutual legal assistance to be afforded in accordance with this Article may be requested for all or any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effective service of judicial documents;
 - (c) Executing searches and seizures;
 - (d) Examining objects and sites;

- (e) Providing information and evidentiary items;
 - (f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.
3. The Member States may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested State.
4. Upon request, the Member States shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings
5. A Member State shall not decline to render mutual legal assistance under this Article on the ground of bank secrecy.
6. The provisions of this Article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters
7. The Member States shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution the authority or the authorities designated for this purpose, shall be notified directly to each Member State and to the Secretary-General. Transmission or requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States; this requirement shall be without prejudice to the right of a State to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States agree, through channels of the International Criminal Police Organisation, if possible.
8. Requests for mutual legal assistance shall be made in writing. In urgent circumstances, and where agreed to by the States, requests may be made orally, which shall be confirmed in writing forthwith.
- (a) The identity of the authority making the request;
 - (b) The subject matter and nature of the investigation prosecution or proceeding to which the request relates and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
 - (e) A summary of the relevant facts, except in respect of requests for the purpose of services of judicial documents;
 - (d) A description of the assistance sought and details of any particular procedure the requesting State wishes to be followed;
 - (e) Where possible, the identity, location and nationality of any person concerned;
 - (f) The purpose for which the evidence, information or action is sought.
10. The requested State 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.
11. A request shall be executed in accordance with the domestic law of the requested State and where possible, in accordance with the procedure specified in the request.

12. The requesting State shall not transmit nor use information or evidence furnished by the requested State for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested State.
13. The requesting State may require that the requested State keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State.
14. 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 considers that execution of the request is likely to prejudice its sovereignty, security, public order (ordre public) or other essential interest;
 - (c) If the authorities of the requested State would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
 - (d) If it would be contrary to the legal system of the requested State relating to mutual legal assistance for the request to be granted.
15. Reasons shall be given for any refusal of mutual legal assistance.
16. Mutual legal assistance may be postponed by the requested State on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested State shall consult with the requesting State to determine if the assistance shall still be given subject to such terms and conditions as the requested State deems necessary.
17. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested State. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or 0 for any period agreed upon by the States, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.
18. The ordinary costs of executing a request shall be borne by the requested State, unless otherwise agreed to by the States concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States 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.

Article 12

MEASURES TO ERADICATE ILLICIT CULTIVATION OF NARCOTIC PLANTS AND TO ELIMINATE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Each Member State shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory.
2. The Member States may cooperate to increase the effectiveness of eradication efforts. Towards this end, Member States shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.

3. The Member States shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic.

4. The Member States may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances listed in Table I and Table II of the 1988 U.N. Convention, which have been seized or confiscated.

Article 13 **SUPPRESSION OF OFFENCES**

1. The Member States shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with Article 3, paragraph 1. For this purpose they may establish and maintain channels of communication between their competent agencies to facilitate the secure and rapid exchange of information concerning all aspects of such offences.

2. The Member States may take necessary measures to allow for the appropriate use or controlled delivery on the basis of bilateral agreements with a view to identifying persons involved in offences established in accordance with Article 3, paragraph 1, and to taking legal action against them.

Article 14 **COOPERATION AND INFORMATION**

The Member States shall furnish information to each other and to the Secretary-General on the implementation of this Convention in their territories and in particular;

- (a) The texts of laws and regulations promulgated in order to give effect to the Convention;
- (b) Particulars of cases of illicit traffic within their jurisdiction, which they consider important because of new trends, disclosed, the quantities involved, the sources from which the substances are obtained or the methods employed by persons so engaged.

Article 15 **APPLICATION OF STRICTER MEASURES**

A Member State may adopt more strict or severe measures than those provided by this Convention, if in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.

Article 16 **SIGNATURE AND RATIFICATION**

1. The Convention shall be open for signature by the Member States of SAARC at the Fifth SAARC Summit at Male' and thereafter, at the SAARC Secretariat at Katmandu.

2. It shall be subject to ratification. Instruments of Ratification shall be deposited with the Secretary-General.

Article 17
ENTRY INTO FORCE

This Convention shall enter into force on the fifteenth day following the day of the deposit of the seventh Instrument of Ratification with the Secretary-General.

Article 18
DEPOSITORY

The Secretary-General shall be the depository of this Convention and shall notify the Member States of signatures to this Convention and all deposits of Instruments of Ratification, The Secretary-General shall transmit certified copies of such instruments to each Member State. The Secretary-General shall also inform Member States of the date on which this Convention will have entered into force in accordance with Article 17.

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

DONE AT Male' on this Twenty Third day of November One Thousand Nine Hundred and Ninety, in Eight originals, in the English Language, all texts being equally authentic.

ANISUL ISLAM MAHMUD
Minister of Foreign Affairs
People's Republic of Bangladesh

VIDYA CHARAN SHUKLA
Minister of External Affairs
Republic of India

DEVENDRA RAJ PANDAY
Minister for Finance

His Majesty's Government of
Nepal
DAWA TSERING
Minister of Foreign Affairs
Kingdom of Bhutan

FATHULLA JAMEEL
Minister of Foreign Affairs
Republic of Maldives

SAHABZADA YAQUB-KHAN
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