

STEPHEN C. BELLAVIA

v.

GLEN D. PLOURDE

Submitted on Briefs September 29, 2020  
Decided October 29, 2020

Panel: MEAD, GORMAN, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Glen D. Plourde appeals from a judgment entered in the District Court (Waterville, *Nale, J.*) and affirmed by the Superior Court (Penobscot County, *Anderson, J.*) granting landlord Stephen C. Bellavia possession of property located in the Town of Albion pursuant to a forcible entry and detainer action. *See* 14 M.R.S. § 6001(1) (2020). Contrary to Plourde's contentions, the court did not err in finding that Plourde was properly evicted under the terms of the lease, *see id.* § 6001(1-B)(A), and in excluding irrelevant retaliation evidence, *see id.* § 6001(3). Further, there was no abuse of discretion in the District Court's quashing of Plourde's subpoena or its denial of Plourde's recusal motion and the court did not err in rejecting Plourde's double jeopardy argument. To the extent that Plourde raises additional issues in his brief, we do not find his arguments to be persuasive.

The entry is:

Judgment affirmed.

Glen Plourde, appellant pro se

Stephen C. Bellavia did not file a brief

Penobscot County Superior Court docket numbers AP-2019-11 and AP-2019-12  
**FOR CLERK REFERENCE ONLY**

STATE OF MAINE  
PENOBCOT, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-19-11, 12

STEPHEN C. BELLAVIA,

Appellee,

v.

GLEN PLOURDE,

Appellant.

ORDER

Mr. Plourde has appealed two forcible entry and detainer (FED) decisions in separate cases involving the same parties. The Plaintiff in WATDC-SA-18-377 (AP-19-12) filed a complaint for forcible entry and detainer against Plourde on September 26, 2018. Hearing began on September 28, 2018, but the hearing was not finished that day and the case was continued to October 25, 2018. Before that second day of hearing, Plaintiff filed another FED—WATDC-SA-18-383 (AP-19-11)—on October 9, 2018, against Plourde involving the same residence. From this point on, the 18-377 presiding judge held periodic status conferences but did not schedule a further hearing, apparently to enable 18-383 to be resolved first. Hearing on that case was held on October 12, 2018, and on the same day the presiding judge entered judgment for the Plaintiff, and Mr. Plourde appealed that decision on October 18, 2018. The presiding judge in 18-377 continued to hold status conferences on that case until the Plaintiff voluntarily dismissed on March 21, 2019.

### **THE APPEALS**

#### **AP-19-12**

Following the March 21 dismissal, Mr. Plourde filed three motions for relief in an attempt to be relieved of the dismissal, with the goal of filing counterclaims. These motions were denied on April 11, 2019. Mr. Plourde appeals from this denial of his motions. The presiding judge denied the motions because there was no action pending, there was no stated basis to vacate the dismissal, and court rules

prohibit the filing of a counterclaim in an FED action. This ruling is entirely correct. After reviewing the motions, I conclude that the sole reason for filing the motions was to enable Plourde to file counterclaims against Bellavia in an effort to recover a variety of expenses and damages, including attorney fees to him personally of \$210,000. Because M.R. Civ. P. 80D(g) prohibits the filing of a counterclaim in FED cases, there is absolutely no reason to relieve Plourde of the dismissal. Although it could be argued, on different facts, that a dismissal should be with prejudice which could preclude later attempts to evict Mr. Plourde, the second FED, 18-383, had already been decided at the time of the 18-377 dismissal. The result in 18-383 could not, as a matter of law, be affected by a later dismissal of 18-377.

AP-18-11

This is an appeal of Judge Nale's October 12, 2018 Judgment that evicted Mr. Plourde from 11 Hussey Rd., Apt. 3, in Albion, Maine. On an appeal from an FED judgment by the District Court, the Superior Court defers to the District Court's "determination of witnesses' credibility and its resolution of conflicts in testimony." *Sherwood Assocs. LP v. Jackson*, 2019 ME 17, ¶ 9, 200 A.3d 1259 (citations and quotation marks omitted). "When the Superior Court acts in its appellate capacity, [it] review[s] the decision of the District Court . . . for abuse of discretion, errors of law, or findings not supported by the evidence. [It] review[s] the court's legal conclusions de novo, and review[s] the court's factual findings for clear error . . ." *Id.* ¶ 11 (citations and quotation marks omitted). By Order dated December 12, 2018, this appeal concerns issues of law only. *See* M.R. Civ. P. 80D(f)(1); M.R. Civ. P. 76D. To the extent that an issue of fact is raised, it will be analyzed according to the clearly erroneous standard only. *See Wells v. Powers*, 2005 ME 62, ¶ 2, 873 A.2d 361. This means, that a ruling of the presiding judge can only be overturned if "(1) no competent evidence supporting the finding exists in the record; (2) the fact-finder clearly misapprehended the meaning of the evidence; or (3) the force and effect of the evidence, taken as a whole, rationally persuades [a court] to a certainty

that the finding is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case.” *Id.*

Mr. Plourde raises eight issues on appeal, including (I) whether a witness who testified against him was an imposter, (II) whether a July 27, 2018 eviction notice was lawful, (III) whether the presumption of retaliation could have been overcome by Plaintiff, (IV) whether a 30-day notice to quit in conjunction with a 7-day notice to quit could be used to evict under the parties’ lease, (V) whether the presiding judge misinterpreted the lease, (VI) whether he was placed in double jeopardy by having a second FED brought against him while an earlier FED involving the same residence was still pending, (VII) whether the presiding judge should have ordered Plaintiff’s counsel to withdraw, and (VIII) whether various alleged state and federal actions over the years were illegal. Appellant’s Issue I fails because there is overwhelming evidence that supports the presiding judge’s findings with regard to the identity of the witness. Issue VI fails because the concept of jeopardy applies to criminal cases only, and to the extent that appellant questions the effect on AP-11 of the dismissal in AP-12, the Court has already addressed this above. Issue VII fails because there is absolutely no support for requiring Plaintiff’s counsel to withdraw. Issue VIII fails because the state and federal governments are not parties to this proceeding. What remain are issues II, III, IV, V, all questioning the eviction process and related topics, which the Court now addresses in greater detail.

#### Eviction Process

Plourde rents apartment 3 at 11 Hussey Rd. in Albion, Maine, from Bellavia. The parties signed a lease on April 29, 2018, defining the rental period as ending on April 29, 2019. The lease, which is in the form of the Attorney General’s Model Landlord Tenant Lease, contains a clause, paragraph 9B, that requires the tenant not to interfere with the rights of the other tenants to live in their apartments

in peace and quiet. It also contains building rules or examples of building rules<sup>1</sup> that include, at paragraph 12-6, maintaining reasonable peace and quiet. In case of a breach of lease provisions by a tenant, the lease provides at paragraph 19 that “[a]ny violations of the provisions of this agreement by the tenant will be deemed a breach of the lease and the Landlord may pursue legal remedies including an action to evict the tenant.” In related footnote 20, the lease makes it clear that the eviction process is governed by 14 M.R.S. §§ 6001-6008. According to 14 M.R.S. § 6001(1-B), if a

lease . . . does not include a provision to terminate the tenancy or does not provide for any written notice of termination in the event of a material breach of a provision of the written residential lease or contract, . . . the landlord . . . may terminate the written residential lease or contract . . . in accordance with section 6002, subsections 1 and 2. After a landlord has provided notice and service as provided in section 6002, including language advising the tenant that the tenant has the right to contest the termination in court, the landlord may commence a forcible entry and detainer action as provided in this section.

*Id.* § 6001(1-B)(A).<sup>2</sup>

According to those provisions, the proper procedure to terminate a tenancy for a material breach of a condition requires that the landlord give written notice that the tenant has substantially breached a lease provision. This notice must indicate the specific ground claimed for issuing the notice. *Id.* § 6002(2). How these statutes define a specific process for the eviction of a tenant in a case such as this is not exactly clear because there are three plausible interpretations. First, it could be concluded that all the landlord has to do is provide a 7-day notice consistent with the requirements of

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<sup>1</sup> “Maintaining reasonable peace and quiet” is listed in the lease but it is also stated that it and other building rules listed are “examples and not legal requirements.” The lease here is a model form lease that the parties signed after filling in some specifics. This reference to rules could be interpreted to mean they are in fact requirements of their lease, but not specifically required by statute; or that they are only examples contained in a model lease and are requirements of the lease only if enacted as building requirements by the landlord, with written notification to the tenant. Resolving this issue is not critical because another specific provision, paragraph 9B requires no interference with the peace and quiet of others.

<sup>2</sup> Paragraph 19 of the lease (p. 16-8 of the Model Lease) is a provision for the termination of the tenancy, but it does not provide for any written notice of termination in the event of a material breach, instead citing to the statute. The “Guide” does provide written notice upon termination information (p. 16-17 of the Model Lease).

14 M.R.S. § 6002(1) and (2). According to the Summary accompanying a recent amendment to the statute, “[t]he bill provides that when a lease fails to contain termination language, the landlord may terminate the lease by providing the tenant with 7 days’ notice and proof of cause.” Comm. Amend. A to L.D. 742, No. H-180 (125th Legis. 2011). Apparently, it was intended that the 7 days’ notice was all that was required prior to the commencement of a forcible entry and detainer action in a case such as this. Second, the statutory provisions could be interpreted as requiring 30 days’ notice as specified in the portion of 14 M.R.S. § 6002 preceding subsections 1 and 2, unless one or more of the 6 causes for termination listed at 14 M.R.S. § 6002(1) was alleged, in which case 7 days’ notice was sufficient. Third, since the parties obviously believed that the section 19 termination procedures found in the “Guide” controlled,<sup>3</sup> it could be argued that a 10-day notice with a right to cure followed by a 30-day notice was required.

In an attempt to comply with these procedures, the Plaintiff sent a letter, dated July 16, 2018, to Defendant, which described a series of complaints about Defendant that Plaintiff had received from other tenants of the apartment building. It stated that Defendant had been disturbing other tenants by frequently making extremely loud noises, leaving bright lights on all night, and by leaving full trash bags in common places. It characterized these complaints constituting a breach of certain sections of Defendant’s lease agreement related to creating a nuisance and that if Defendant didn’t “resolve these issues,” Plaintiff would have to ask him to leave but would give him 10 days to resolve them. Later, on July 27, 2018, Plaintiff sent by certified mail a 7-day notice to quit that detailed the alleged breach related to excessive noise, rotting garbage, and Defendant’s use of a sticky substance on his deck that attracted insects and was described as a nuisance to all. On August 30, 2018, after

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<sup>3</sup> According to the “Guide,” which apparently was attached to the lease signed by the parties, if there was a substantial breach, a landlord was required to provide the tenant a 10-day notice describing the alleged breach of the agreement and giving the tenant an opportunity to correct the alleged breach. If not corrected, the landlord could then initiate the eviction process by providing a 30-day notice.

three failed attempts at in-hand service, Plaintiff mailed to Defendant a combined 7-day notice to quit, dated August 25, 2018, and a 30-day notice to quit. The 7-day notice informed the Defendant that because he committed a nuisance, his tenancy would terminate 7 days from the date the notice is served on him. The 30-day notice stated: "You have 30 days from the date this notice is delivered to you to vacate these premises, unless you have paid rent through the date when this notice expires, in which case the notice will expire on the date through which rent has been paid. If you do not vacate the premises within 30 days, you will be liable for a Forcible Entry and Detainer Action, 14 M.R.S.A. § 6001, et seq. You have the right to contest the termination of your tenancy in court." Title 14, section 6002 authorizes the use of the combined 7- and 30-day notice. According to the lease, paragraph 13, a notice from landlord to tenant is valid only if addressed to the tenant and delivered personally to the tenant's residence or sent by mail.

The Landlord here has covered all bases in providing notice of eviction. If only a 7-day notice were required, Plaintiff provided two of them, not following through on the first, then providing a sufficient one with the combined 30-day notice. It was sufficient because it contained the necessary "challenge in court" language and, when viewed in conjunction with the earlier one, specified the breach. If a 30-day notice were required, Plaintiff provided a sufficient 30-day notice by sending it on August 30, 2018. Finally, if the "Guide" controlled, Plaintiff sent a 10-day notice to cure and followed it up with the 30-day notice to quit.

#### Sufficiency of Evidence of Breach

Although notice was sufficient, Defendant questions whether there was sufficient evidence of his breaching the lease. Two witnesses testified that Defendant made frequent, loud, and unusual noises, including stomping, that disturbed enjoyment of their respective rental units. One testified that the Defendant's stomping was so intrusive that it caused dishes to fall out the dish cabinet. The trial

court had sufficient competent evidence to conclude that the Defendant interfered with the rights of others to live in their apartments in peace and quiet.

Retaliation

Regrettably, the trial court judge restricted Defendant in his attempts to offer evidence to ignite the rebuttable presumption of retaliation. In an effort to discern whether this error was harmless or not, this Court has reviewed Defendant's claims in this regard contained in his brief, accepting that he in fact made the various complaints that he claims he made. Most have nothing to do with the criteria listed at 14 M.R.S. § 6001(3) because they do not pertain to conditions affecting the dwelling unit that may constitute a violation of a code, statute, regulation, or ordinance, or any of the other factors specified. Although Defendant made a human rights complaint against Plaintiff, the complaint is clearly not a "fair housing complaint for which there is a reasonable basis," as required by subsection e. of the above statute, but was a frivolous complaint based on his passing Mr. Bellavia in a narrow stairway, while holding a potted plant. A court "will not disturb a judgment if an error is harmless. A preserved error will be treated as harmless if it is highly probable that the error did not affect the judgment." *Tolliver v. Dep't of Transp.*, 2008 ME 83, ¶ 39, 948 A.2d 1223. Assuming the error was preserved, there is absolutely no viable allegation of retaliation and any trial court error was harmless.

The entry is:

Judgment in WATDC-SA-18-383 (AP-19-11) is **AFFIRMED**. Dismissal in WATDC-SA-18-377 (AP-19-12) is **AFFIRMED**. The clerk is directed to incorporate this order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated: 12/20/19



WILLIAM ANDERSON  
JUSTICE, SUPERIOR COURT

ORDER/JUDGMENT ENTERED IN THE  
COURT DOCKET ON: 12/20/19

STATE OF MAINE  
KENNEBEC, ss

DISTRICT COURT  
LOCATION: WATERVILLE  
DOCKET NO. SA-18-377

Steve Bellavia )  
Plaintiff. )  
 )  
v. )  
 )  
Glen Plourde )  
Defendant. )

ORDER

On March 21, 2019, Plaintiff voluntarily dismissed this FED action. Defendant has now filed three motions for relief and seeking to add Plaintiff's name to 14 M.R.S. § 6014. The request is denied because:

- (1) there is no longer any action pending;
- (2) there is no stated basis to vacate dismissal from 3/21/2019; and
- (3) Pursuant to M.R.C.P. 802(g),

"Forcible Entry and Detainer actions shall not be joined with any other action, nor shall a defendant in such action file any counterclaim."

The entry is: Defendant's motions filed April 4, 2019 are denied.

This order may be incorporated on the docket of the case by reference pursuant to Me. R. Civ. P. 79(a).

Dated: 4/11/19



Valerie Stanfill  
Judge, Maine District Court

STATE OF MAINE

DISTRICT COURT  
Location WATERVILLE  
Docket No. WATDC-SA-2018-00383

STEVEN BELLAVIA  
C/O JAMES LALIBERTY, ESQ  
ONE CENTER STREET  
WATERVILLE ME 04901

JUDGMENT  
FORCIBLE ENTRY AND DETAINER

v.

GLEN PLOURDE  
11 HUSSEY ROAD APT 3  
ALBION ME 04910

and All Other Occupants

This matter came on for hearing on 10/12/2018 at 01:00 p.m. The court finds that the summons and complaint were duly served on the defendant. The plaintiff did (not) appear. The defendant did (not) appear.

It is Ordered and the entry will be:

The complaint is dismissed with(out) prejudice by the plaintiff.

Judgment is rendered:  by default.  
 by agreement.  
 after hearing.

Judgment is granted to the defendant.

Judgment is granted to the plaintiff for possession of the following described premise  
11 HUSSEY ROAD, APT. 3, ALBION, ME

Other \_\_\_\_\_

If Judgment is granted to the plaintiff, the writ of possession shall issue seven calendar days after the judgment is entered.

Date: 10-12-18

John Mace  
Judge

A true copy, Attest:

Clerk

organization designated at the time of the training by the Secretary of State under section 219(a)(1) of the Immigration and Nationality Act as a foreign terrorist organization shall be fined under this title or imprisoned for ten years, or both. To violate this subsection, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (c)(4)), that the organization has engaged or engages in terrorist activity (as defined in section 212 of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section. There is jurisdiction over an offense under subsection (a) if—

(1) an offender is a national of the United States (as defined in<sup>1</sup> 101(a)(22) of the Immigration and Nationality Act) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(2) an offender is a stateless person whose habitual residence is in the United States;

(3) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(4) the offense occurs in whole or in part within the United States;

(5) the offense occurs in or affects interstate or foreign commerce; or

(6) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(c) DEFINITIONS.—As used in this section—

(1) the term “military-type training” includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction (as defined in section 2232a(c)(2)<sup>2</sup>);

(2) the term “serious bodily injury” has the meaning given that term in section 1365(h)(3);

(3) the term “critical infrastructure” means systems and assets vital to national defense, national security, economic security, public health or safety including both regional and national infrastructure. Critical infrastructure may be publicly or privately owned; examples of critical infrastructure include gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), and transpor-

tation systems and services (including highways, mass transit, airlines, and airports); and

(4) the term “foreign terrorist organization” means an organization designated as a terrorist organization under section 219(a)(1) of the Immigration and Nationality Act.

(Added Pub. L. 108-458, title VI, § 6602, Dec. 17, 2004, 118 Stat. 3761.)

#### REFERENCES IN TEXT

Sections 101, 212, and 219 of the Immigration and Nationality Act, referred to in subsecs. (a), (b)(1), and (c)(4), are classified to sections 1101, 1182, and 1189, respectively, of Title 8, Aliens and Nationality.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (a), is classified to section 2656f(d)(2) of Title 22, Foreign Relations and Intercourse.

### CHAPTER 113C—TORTURE

Sec.

2340. Definitions.

2340A. Torture.

2340B. Exclusive remedies.

#### AMENDMENTS

2002—Pub. L. 107-273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, repealed Pub. L. 104-294, title VI, § 601(j)(1), Oct. 11, 1996, 110 Stat. 3501. See 1996 Amendment note below.

1996—Pub. L. 104-132, title III, § 303(c)(1), Apr. 24, 1996, 110 Stat. 1253, redesignated chapter 113B as 113C. Pub. L. 104-294, title VI, § 601(j)(1), Oct. 11, 1996, 110 Stat. 3501, which made identical amendment, was repealed by Pub. L. 107-273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, effective Oct. 11, 1996.

#### § 2340. Definitions

As used in this chapter—

(1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

(Added Pub. L. 103-236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103-415, § 1(k), Oct. 25, 1994, 108 Stat. 4301; Pub. L. 103-429,

<sup>1</sup>So in original. The word “section” probably should appear after “in”.

<sup>2</sup>So in original. Probably should be section “2232a(c)(2)”.

§ 2(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 108-375, div. A, title X, § 1089, Oct. 28, 2004, 118 Stat. 2067.)

#### AMENDMENTS

2004—Par. (3). Pub. L. 108-375 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “United States” includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 46501(2) of title 49.”

1994—Par. (1). Pub. L. 103-415 substituted “within his custody” for “with custody”.

Par. (3). Pub. L. 103-429 substituted “section 46501(2) of title 49” for “section 101(38) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(38)).

#### EFFECTIVE DATE

Section 506(c) of Pub. L. 103-236 provided that: “The amendments made by this section [enacting this chapter] shall take effect on the later of—

“(1) the date of enactment of this Act [Apr. 30, 1994]; or

“(2) the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” [Convention entered into Force with respect to United States Nov. 20, 1994, Treaty Doc. 100-20.]

#### § 2340A. Torture

(a) OFFENSE.—Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a) if—

(1) the alleged offender is a national of the United States; or

(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

(c) CONSPIRACY.—A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

(Added Pub. L. 103-236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103-322, title VI, § 60020, Sept. 13, 1994, 108 Stat. 1979; Pub. L. 107-56, title VIII, § 811(g), Oct. 26, 2001, 115 Stat. 381.)

#### AMENDMENTS

2001—Subsec. (c). Pub. L. 107-56 added subsec. (c).

1994—Subsec. (a). Pub. L. 103-322 inserted “punished by death or” before “imprisoned for any term of years or for life”.

#### § 2340B. Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.

(Added Pub. L. 103-236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 464.)

#### CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

Sec.

2341.	Definitions.
2342.	Unlawful acts.
2343.	Recordkeeping, reporting, and inspection.
2344.	Penalties.
2345.	Effect on State and local law.
2346.	Enforcement and regulations.

#### AMENDMENTS

2006—Pub. L. 109-177, title I, § 121(g)(3), (4)(A), Mar. 9, 2006, 120 Stat. 224, substituted “TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO” for “TRAFFICKING IN CONTRABAND CIGARETTES” in chapter heading, added items 2343 and 2345, and struck out former items 2343 “Recordkeeping and inspection” and 2345 “Effect on State law”.

#### § 2341. Definitions

As used in this chapter—

(1) the term “cigarette” means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

(2) the term “contraband cigarettes” means a quantity in excess of 10,000 cigarettes, which bear no evidence of the payment of applicable State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

(C) a person—

(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having posses-

# **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

## **PART I**

### ***Article 1***

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

#### *Article 2*

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

#### *Article 3*

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

#### *Article 4*

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

#### *Article 5*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory

under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### ***Article 6***

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

#### ***Article 7***

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

#### ***Article 8***

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences 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.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### *Article 9*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### *Article 10*

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

#### *Article 11*

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

#### *Article 12*

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

#### *Article 13*

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

#### *Article 14*

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

#### *Article 15*

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

#### *Article 16*

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

### **PART II**

#### *Article 17*

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

#### ***Article 18***

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

- (a) Six members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

#### ***Article 19***

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

#### ***Article 20***

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

#### ***Article 21***

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
  - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
  - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

- (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
- (d) The Committee shall hold closed meetings when examining communications under this article;
- (e) Subject to the provisions of subparagraph (e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
- (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
  - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
  - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## *Article 22*

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
  - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
  - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

#### ***Article 23***

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### ***Article 24***

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

### **PART III**

#### ***Article 25***

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### ***Article 26***

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### ***Article 27***

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

#### ***Article 28***

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

#### ***Article 29***

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a

conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

#### *Article 30*

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

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

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

#### *Article 31*

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

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

***Article 32***

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

***Article 33***

1. 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.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.