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Item 3 of the provisional agenda*

Consideration of the draft United Nations Convention against Corruption, with particular emphasis on articles 1-39

Revised draft United Nations Convention against Corruption

Corrigendum

Replace articles 33-39 with the following:

Article 33

*Criminalization of money-laundering of proceeds of corruption*²¹⁵

Option 1²¹⁶

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

(a) The acquisition, possession or use of property, knowing, at the moment such property is received, that it is the proceeds of crime;

(b) The administration, custody, disposal, exchange, conversion, deposit, surrender as a surety, transport, transfer, investment, alteration or destruction 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;

* A/AC.261/8.

²¹⁵ During the first reading of the draft text, some delegations proposed to amend the title of this article to read "Criminal acts related to corruption".

²¹⁶ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).



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

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

(e) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall include as predicate offences, as a minimum, the offences established in accordance with article [...] [Criminalization of corruption] of this Convention;

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

(c) For the purposes of paragraph 1 of this article, 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; and

(e) When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

Option 2²¹⁷

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

²¹⁷ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, most delegations expressed their support for this option.

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;²¹⁸

(b) Each State Party shall include as predicate offences all offences established in accordance with this Convention;²¹⁹

(c) For the purposes of subparagraph (b) above, 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;

²¹⁸ During the first reading of the draft text, some delegations expressed concern about the broad range of predicate offences envisaged by this paragraph as drafted. Those delegations held the view that only serious predicate offences should be covered. Some other delegations expressed their preference for a broad range of predicate offences.

²¹⁹ The text of this subparagraph appeared previously as paragraph 3 of option 1, which was a proposal submitted by Austria and the Netherlands. During the first reading of the draft text, Austria and the Netherlands proposed the inclusion of this sentence in the proposal of Colombia. Colombia agreed with this proposal. Consequently, Austria and the Netherlands withdrew option 1.

(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.²²⁰

Article 34²²¹
Account offences

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

- (a) Creating or using an invoice or any other accounting document or record containing false or incomplete information;
- (b) Unlawfully omitting to make a record of a payment.

[Articles 35 and 36 were deleted.]

Article 37²²²
Criminalization of obstruction of justice

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 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.

2. Nothing in this article shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 38
Liability of legal persons

Option 1²²³

- 1. Each State Party shall take such measures as may be necessary, in accordance with fundamental principles of its domestic law, to establish the liability of legal persons for participation in the crimes set forth in articles [...] [articles on criminalization] of this Convention.

²²⁰ With regard to the criminalization of money-laundering, France proposed the wholesale incorporation of all the relevant provisions of article 6 of the Organized Crime Convention. France held the view that the proposal submitted by Austria and the Netherlands could therefore be supplemented by the inclusion of the provisions of article 6, paragraph 2, of that instrument.

²²¹ Text taken from the proposal submitted by France (A/AC.261/IPM/10). During the first reading of the draft text, some delegations raised the issue of the need for sanctions other than criminal sanctions to be included in order to give meaning to the article. Some delegations pointed out the relationship of this article with article 12 and suggested either combining article 34 with that article or deleting article 34.

²²² Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

²²³ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

2. In accordance with the fundamental principles of the domestic law 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.

Option 2²²⁴

1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to establish the liability of a legal person situated in its territory or constituted in accordance with its legislation, when a person liable for its conduct or control commits, in such capacity, an offence set forth in this Convention. Such liability may be criminal, civil or administrative.

2. The liability referred to in the preceding paragraph shall be incurred without prejudice to the criminal liability of the natural persons who allegedly committed the offences.

3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with paragraph 1 of this article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary sanctions.

Option 3²²⁵

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 the offences established in accordance with 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.

Option 4²²⁶

Each State Party shall take the penal, legislative or administrative measures necessary in compliance with principles of its domestic law, concerning legal persons, in the event that they contribute to the commitment

²²⁴ Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

²²⁵ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, most delegations expressed their preference for this option, as it was taken from the Organized Crime Convention and therefore contained already agreed language.

²²⁶ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

of crimes set forth in article [...] [Criminalization of corruption] of this Convention.

Option 5²²⁷

1. Each State Party shall adopt measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes such as plunder and for the other offences established in accordance with articles [...] [articles on criminalization] of this Convention.

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

3. Such liability shall be without prejudice to the criminal liability of the natural or juridical 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.

5. Each State Party shall take the necessary measures to allow heads and other responsible officials of businesses who have knowledge of or consented to the crime or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud.

Article 39²²⁸

Specialized authorities

Each State Party shall take such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption. They shall have the necessary independence, in accordance with fundamental principles of the domestic law of the State Party, to be able to carry out their functions effectively and free from any undue pressure. Each State Party shall ensure that the staff of such entities has adequate training and financial resources to carry out their tasks.

²²⁷ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

²²⁸ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

During the first reading of the draft text, it was agreed to review this article in conjunction with article 40.