



General Assembly

Distr.: Limited
10 December 1999

English
Original: Spanish

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

Sixth session

Vienna, 6-17 December 1999

Agenda item 4

Consideration of the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4 *ter*, 17 *bis* and 20-30

Proposals and contributions received from Governments

Mexico: amendment to article 4 *ter* and proposal for a new article of the revised draft United Nations Convention against Transnational Organized Crime

*Article 4 *ter* Offences of corruption*

1. This Convention shall apply to the offences of corruption described in this article, when involving an organized criminal group.

2. Each State Party shall adopt, in conformity with its constitutional principles, such legislative and other measures as may be necessary to establish as criminal offences the following acts of corruption, when committed intentionally and involving an organized criminal group:

(a) The solicitation or acceptance, directly or indirectly, by a public official or a person who provides a public service, of any article of monetary value or other benefits such as gifts, favours, promises or advantages for himself or another person or entity, in exchange for acting or refraining from acting in the performance of his public duties or in the provision of a public service;

(b) The promise, offering or giving, directly or indirectly, to a public official or a person who provides a public service, of any article of monetary value or other benefits such as gifts, favours, promises or advantages for that public official or for another person or entity, in exchange for acting or refraining from acting in the performance of his public duties or in the provision of a public service;

(c) The acting or refraining from acting, by a public official or a person who provides a public service, in the performance of his duties, for the purpose of unlawfully obtaining benefits for himself or for a third party;

(d) The promise, offering or giving, directly or indirectly, by its nationals, persons having their habitual residence in its territory or businesses domiciled there, of any article of monetary value or other benefits such as gifts, favours, promises or advantages, in exchange for the acting or refraining from acting by a public official of another State or a person who provides a public service in another State, in the performance of that official's public duties or provision of a public service, in connection with an economic or commercial transaction;

(e) The increase in the assets of a public official or a person who provides a public service when that person is unable to prove the legitimacy of that increase or the lawful origin of the property in his or her name or in respect of which he or she acts as owner;

(f) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

(g) The participation as an accomplice in any of the offences established pursuant to this article.

3. Moreover, States Parties shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences other forms of corruption when committed intentionally and involving an organized criminal group.

4. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative and such persons, if held liable, shall be subject to effective, proportionate and dissuasive sanctions, including monetary sanctions.

Article [...]
Measures to combat corruption

For the purposes specified in article 4 *ter* of this Convention, States Parties agree to consider the applicability, within their own domestic systems, of measures to establish, maintain and strengthen:

(a) A comprehensive internal regulatory and oversight regime for public office and service aimed at preventing conflicts of interest and ensuring the preservation and proper use of resources assigned to public officials and to persons who provide public services, as well as a proper understanding of their responsibilities and the rules governing their activities;

(b) Mechanisms to enforce such a regime and rules of conduct;

(c) Systems for the protection of public officials and persons who provide public services and also private individuals who in good faith report acts of corruption involving an organized criminal group, including protection of their identity, in conformity with the fundamental principles of their domestic law;

(d) National authorities to ensure the effective prevention and detection of the corruption of public officials;

(e) Systems for the declaration of income, assets and liabilities by persons who perform public duties or provide public services in such posts as are laid down by law and for the publication of such declarations where appropriate;

(f) Measures to prevent the corruption, by organized criminal groups, of public officials and persons who provide public services, such as feasible measures to detect and monitor the transborder movement of cash, subject to safeguards to ensure proper use of information, and to establish sufficient internal accounting controls to enable their personnel to detect acts of corruption;

(g) The study of further preventive measures that take account of the relationship between equitable remuneration and probity in public service.
