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

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Articles 4 *ter*, 20, 22 and 22 bis of the revised draft United Nations Convention against Transnational Organized Crime

Report of the Chairman on the informal consultations

I. Introduction

1. Pursuant to its decision at its fifth session, held in Vienna from 4 to 15 October 1999, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime devoted part of the informal consultations at its sixth session, held on 8-10 December 1999, to the consideration of articles 4 *ter*, 20, 22 and 22 *bis* of the revised draft United Nations Convention against Transnational Organized Crime.
2. Regarding article 4 *ter*, the participants at the informal consultations had before them proposals made by Colombia (A/AC.254/L.100), Japan (A/AC.254/L.111) and the Russian Federation (A/AC.254/L.115). The delegation of Mexico also submitted a proposal contained in a document distributed in English, French and Spanish. At the request of the Chairman, the work of the informal consultations was based on the text of the draft Convention contained in document A/AC.254/4/Rev.5.
3. The Chairman of the informal consultations hereby submits the recommendations made at the informal consultations to the Ad Hoc Committee for its consideration and action.

II. Recommendations

Article 4 *ter*: Measures against corruption

Title

4. The title of article 4 *ter* should read “Criminalization of corruption”.

Paragraph 1

5. Paragraph 1 should be deleted.

Paragraph 2

6. On the chapeau of paragraph 2, the two issues debated were the retention or deletion of the words “when committed intentionally” and the retention or deletion of the text appearing in square brackets. The question of intention appeared to be a matter of law and not only a textual issue and required further consideration. On the question of involvement of an organized criminal group, some delegations were of the view that article 2 of the draft Convention was sufficient in establishing the link with organized crime. Other delegations were of the view that that link was important in article 4 *ter* to ensure that criminalization of corruption pursuant to the Convention would remain within the boundaries of the instrument.

7. On paragraph 2 (a), with the exception of one delegation, participants were of the view that the word “promise” should remain in the text without square brackets. A proposal by the delegation of the Republic of Korea to replace the words “undue advantage” with the words “undue pecuniary or other advantage” found favour with the participants at the informal consultations. There were several proposals for alternative text to the words “in exchange for”. Those proposals were not distant from each other and delegations agreed that the appropriate formulation would be found. In response to doubts raised about the clarity of the words “in the exercise of his official duties”, the proposal of the delegation of Canada to replace it with the phrase “in the context of the exercise of his official duties” might be the basis for further work in reaching agreement.

8. On paragraph 2 (b), there was a proposal to find an alternative term for the words “solicitation and acceptance”, but it was felt that the issue required further consideration to ensure use of the most appropriate terms, which would fully reflect the intention of the article.

Paragraph 3

9. The majority of delegations were in favour of deleting paragraph 3. Three delegations expressed their wish to retain the paragraph, while two others were of the view that the concept of transnational corruption would enrich the Convention and could be retained in text drafted in a non-mandatory fashion.

Paragraph 4

10. It was agreed that it would be best to postpone consideration of paragraph 4 until the outcome of the consideration of article 3 of the draft Convention was clear.

Paragraph 4 bis

11. On paragraph 4 *bis*, it was felt that the text should be placed in square brackets until the Ad Hoc Committee had reached a decision on the possible separate instrument against corruption, pursuant to action to be taken by the General Assembly on the draft resolution contained in document A/C.3/54/L.6.

Paragraph 5

12. It was agreed that placement of paragraph 5 should be decided upon, as it dealt with issues that were not directly related to criminalization. Regarding paragraph 5 (b), the delegation of the United States of America undertook to propose a formulation that would meet all concerns.

Paragraph 6

13. Discussion on paragraph 6 was based on the proposal submitted by the delegation of Japan (A/AC.254/L.111). It was felt that agreement might lie in trying to achieve a broad definition, while maintaining a key role for domestic law.

Article 20: Collection and [exchange] of information on organized crime

14. The participants at the informal consultations agreed on the revised text of article 20 contained in document A/AC.254/L.117 and hereby submit that revised text to the Ad Hoc Committee for its approval.

Article 22: Prevention at the national level

15. The participants at the informal consultations bring to the attention of the Ad Hoc Committee the revised text of article 22, also contained in document A/AC.254/L.117. While one delegation requested some additional time to study the revised text, it was generally considered the basis for the final review of the Ad Hoc Committee. In view of the revisions to article 22, participants agreed that article 22 *bis* would be superseded and therefore recommend that it be deleted.
