



# General Assembly

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## Ad Hoc Committee for the Negotiation of a Convention against Corruption

Third session

Vienna, 30 September-11 October 2002

Agenda item 3

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

## Proposals and contributions received from Governments

### Austria, Mexico and Netherlands: amendments to articles 30 and 32 and proposal on a new article\*

#### Article 30

1. It is proposed to replace article 30 with option 2 of article 20, deleting the word “also” in the first line of that article.
2. The title of new article 30 should read “Complicity, instigation or attempt [Complicity in, instigation of or attempt to commit a crime]”.
3. It is thus proposed that article 30 should read as follows:

*“Article 30*

*“Complicity, instigation or attempt [Complicity in, instigation of or attempt to  
commit a crime]*

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation as an accomplice or instigator in an offence established in accordance with articles [...] of this Convention.

“2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its

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\* These articles consist of a consolidated text submitted by Austria, Mexico and the Netherlands. Square brackets indicate that at least one of those delegations either does not support the provision or supports the inclusion of the alternative wording.



domestic law, any attempt to commit an offence established in accordance with articles [...] of this Convention.”

**New article 30 bis**

4. It is proposed to add the following article as article 30 bis:

*“Article 30 bis*

*“Knowledge, intent or purpose as elements of an offence*

“Knowledge, intent or purpose required as an element of an offence established in accordance with articles [...] of this Convention may be inferred from objective factual circumstances.”

**Article 32**

5. It is proposed to amend article 32 to read as follows:<sup>1</sup>

*“Article 32*

*“[Criminalization of] corruption in the private sector*

“Each State Party shall [consider adopting] adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of business activity:

“(a) The promising, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in breach of his or her duties [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector]<sup>2</sup>;

“(b) The solicitation or acceptance, directly or indirectly, of any undue advantage by any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting in breach of his or her duties [in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector].<sup>2”</sup>

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<sup>1</sup> From a systematic point of view, it seems preferable to move this article to the articles on bribery of public officials, so that the sequence would be article 19 (Criminalization of corruption involving a public official), article 19 bis (Criminalization of corruption involving a foreign public official), followed by article 32 ([Criminalization of] corruption in the private sector).

<sup>2</sup> Additional text proposed by Mexico.