



General Assembly

Distr.: Limited
10 October 2002

Original: English

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

Revised draft United Nations Convention against Corruption

Addendum

III. Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement

Article 19¹

[Bribery] [Corruption] of national public officials

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

(a) The promise, offering or giving to a public official [or a person who performs public functions],² directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

¹ The text of this article is a revised version submitted, pursuant to a request by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft Convention, by an informal working group established following the second reading of the draft text at the third session of the Ad Hoc Committee (A/AC.261/L.141). The Ad Hoc Committee did not review this text after its release.

² The relevance of this addition depends on the scope of the definition of "public official" in article 2 of the draft Convention.



(b) The solicitation or acceptance by a public official [or a person who performs public functions],³ directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

[Article 19 bis had not been considered at the time of submission of this document.]

[The Ad Hoc Committee decided to consider article 20 as the last of the articles on criminalization.]⁴

Article 21⁵
Trading in influence

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

(a) The promising, offering or granting, directly or indirectly, of any undue advantage in order to induce a public official or any other person to abuse his or her real or supposed influence with a view to obtaining from an administration or a public authority of the State Party any undue advantage or [any favourable] decision for the original instigator of the act or for any other person;

(b) For a public official or any other person, the soliciting or accepting, directly or indirectly, of any undue advantage for himself or herself or for another person, through the abuse of his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party any undue advantage or [any favourable] decision for himself or herself or for any other person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

[The revised version of article 22 was not available at the time of submission of this document.]

³ The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft Convention.

⁴ For the text of this article, see document A/AC.261/3/Rev.1 and Corr.1; see also proposals submitted in connection with this article in documents A/AC.261/L.121, A/AC.261/L.127, A/AC.261/L.133, A/AC.261/L.144 and A/AC.261/L.146.

⁵ The text of this article is a revised version submitted, pursuant to a request by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft Convention, by an informal working group established following the second reading of the draft text at the third session of the Ad Hoc Committee (A/AC.261/L.147). The Ad Hoc Committee did not review this text after its release.

Article 23
*Concealment*⁶

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally [, following the commission of other offences established in accordance with this Convention without participating in these offences,]⁷ the concealment, [retention,] possession or transmission of movable property or funds or the serving as an intermediary in the transmission [or retention] of such property or funds, when the person involved is aware that such movable property or funds are the result of one of the offences established in accordance with this Convention.⁸

[*Article 24*
Abuse of [functions] [power]

Each State Party shall adopt such legislative and other measures as may be necessary to establish [in accordance with basic principles of its domestic law] as criminal offences the abuse of his or her functions [or position by performing or failing to perform an act] [or any act or omission] in the discharge of those functions by a public official [, international civil servant] or [a person who performs public functions], for the purpose of obtaining illicit benefits for himself or herself or for a third party.]

[*The revised version of article 25 was not available at the time of submission of this document.*]

[*The revised version of article 26 was not available at the time of submission of this document.*]

[*The consideration of article 27 was deferred in view of the efforts to merge this article with article 22.*]

⁶ During the second reading of the draft text at the third session of the Ad Hoc Committee, most delegations wished to retain this article, because they considered it to contain concepts fundamentally different than money-laundering. Many delegations were of the view that this article should be deleted, as the matter was covered by or the concept should be treated in conjunction with article 33. The decision on this matter is to be taken after consideration of article 33.

⁷ This proposal was made by Mexico during the second reading of the draft text, at the third session of the Ad Hoc Committee. There was no objection to the proposal.

⁸ During the second reading of the draft text, at the third session of the Ad Hoc Committee, Pakistan proposed the following formulation:

“Concealment and continuous retention

“Each State Party shall take suitable measures to criminalize the continuing act of retaining and concealing the proceeds and properties arising from acts of corruption under the respective national legislation.”

[Article 28⁹
*Improper benefits*¹⁰

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence of corruption the collection, directly or indirectly, by a public official [or a person who performs public functions], of any article of monetary value in undue quantities or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration.]

[Article 29¹¹
*Other criminal offences*¹²

The following shall be considered corrupt acts subject to sanctions provided for in the domestic legislation of each State Party:

(a) Non-disclosure: failure of a public official, either wilfully or through gross negligence, to disclose accurately on an annual basis his or her assets, liabilities and net worth in order to defraud the Government of obligations such as taxes and/or to deceive the proper authorities of his or her unlawful activities and proceeds;

(b) Non-divestment: failure of a public official to divest applicable assets to avoid conflicts of interest to a person or persons other than his or her spouse or relatives within the fourth civil degree of consanguinity or affinity.]

⁹ The text of this article is a revised version submitted, pursuant to a request by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft Convention, by the Czech Republic, Egypt, Mexico and Peru, following the second reading of the draft text at the third session of the Ad Hoc Committee. The Ad Hoc Committee did not review this text after its release.

¹⁰ During the first and the second readings of the draft text, at the first and third sessions of the Ad Hoc Committee, it was pointed out that this title did not appropriately reflect the offence to be established by the article. While most countries were familiar with the offence, it was noted that, in recently revised criminal laws, the concept was considered to be covered by other offences. As a result, some delegations questioned the need to have a separate article on this subject.

¹¹ Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

¹² During the second reading of the draft text, at the third session of the Ad Hoc Committee, most delegations proposed the deletion of this article, as all matters it contained had been covered elsewhere. Some delegations were of the opinion that some of the conduct covered in this article did not merit criminalization. Also during the second reading of the draft text, Colombia proposed the inclusion of article 28 bis in the draft Convention, to replace this article. The proposal of Colombia is contained in paragraph 6 of document A/AC.261/L.94.