



# 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

### Australia, Botswana, Cameroon, Canada, New Zealand and the United Kingdom of Great Britain and Northern Ireland: amendments to articles 19-32 and proposal of a new article on knowledge, intent or purpose as elements of an offence\*

#### Article 19

1. It is proposed to amend article 19 to read as follows:

*“Article 19*

*“Corruption of 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, 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;

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\* Text on which the sponsoring delegations do not have common views appears in square brackets.



“(b) The solicitation or acceptance by a public official, 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.”<sup>1</sup>

#### **Article 19 bis**

2. It is proposed to amend article 19 bis to read as follows:

*“Article 19 bis<sup>2</sup>  
“Corruption of foreign public officials or officials of  
an international organization*

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the promise, offering or giving to a foreign public official or an official of an international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official acts or refrains from acting in the exercise of his or her official duties [in relation to the conduct of international business] [, at least in the case of breach of such duties].

“[2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of an international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official acts or refrains from acting in the exercise of his or her official duties [in relation to the conduct of international business] [, at least in the case of breach of such duties].]”

#### **Article 20**

3. Article 20 (Complicity, instigation or attempt) should be deleted.<sup>3</sup>

#### **Article 21**

4. It is proposed to amend article 21 to read as follows:

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<sup>1</sup> This text is the same as in option 1 of the Consolidated Text (from Austria, Netherlands and France) and in article 8 of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I).

<sup>2</sup> Amendment to the proposal on article 19 bis contained in document A/AC.261/L.135.

<sup>3</sup> The content of this article is covered by article 30.

*“Article 21  
“Trading in influence”<sup>4</sup>*

“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 promise, offering or giving to a public official, directly or indirectly, of an undue advantage as consideration for the exercise of influence by that public official in order to obtain from a public authority of the State Party any undue advantage or any favourable decision for himself or herself or for another person or entity, whether or not the influence is or is able to be exercised;

“(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official himself or herself, as consideration for the exercise of influence in order to obtain from a public authority of the State Party any undue advantage or any favourable decision for himself or herself or for another person or entity, whether or not the influence is or is able to be exercised.”

**Article 22**

5. It is proposed to amend article 22 to read as follows:

*“Article 22  
“Misappropriation and other misconduct by a public official”<sup>5</sup>*

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

“(a) The misappropriation by a public official of any property, public or private funds or securities or any other object entrusted to the public official by virtue of his or her position or duties;

“(b) Any other serious misconduct in office by a public official designed to secure a benefit for himself or herself or for another person or entity.”

**Article 23**

6. Article 23 (Concealment) should be deleted.<sup>6</sup>

**Article 24**

7. Article 24 (Abuse of functions) should be deleted.<sup>7</sup>

<sup>4</sup> This article covers actions that do not constitute an exercise of official duties as described in article 19.

<sup>5</sup> The text of this article covers the content of article 27.

<sup>6</sup> The content of this article is covered by article 33, which could be renamed (for example, “Possession of the proceeds of crime”) to make clear that it covers more than money-laundering.

<sup>7</sup> Where personal benefit is involved, this is covered by articles 19 and 22.

**Article 25**

8. Article 25 (Unlawful enrichment) should be deleted.<sup>8</sup>

**Article 26**

9. Article 26 (Use of classified or confidential information) should be deleted.<sup>9</sup>

**Article 27**

10. Article 27 (Diversion of property) should be deleted.<sup>10</sup>

**Article 28**

11. Article 28 (Improper benefits) should be deleted.<sup>11</sup>

**Article 29**

12. Article 29 (Other criminal offences) should be deleted.<sup>12</sup>

**Article 30**

13. Article 30 should be amended to read as follows:

*“Article 30  
“Complicity, instigation or attempt*

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

**New article 30 bis**

14. It is proposed to add the following new article after article 30:

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<sup>8</sup> Many delegations had difficulties with this article. If any such article is to appear in the draft Convention, it would need to make clear that it is subject to a State Party's Constitution and the fundamental principles of its legal system.

<sup>9</sup> Where personal benefit is involved, this is covered by articles 19 and 22.

<sup>10</sup> The content of this article is covered by article 22.

<sup>11</sup> The content of this article is covered, so far as is necessary, by articles 19 and 22.

<sup>12</sup> So far as these matters are appropriate for criminal sanction, they are addressed elsewhere in the draft Convention.

*“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.”<sup>13</sup>

**Article 31**

15. Article 31 (Enhancement of sanctions) should be deleted.<sup>14</sup>

**Article 32**

16. It is proposed to amend article 32 to read as follows:

*“Article 32**“Corruption in the private sector*

“Each State Party shall [adopt] [consider adopting] 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;

“(b) The solicitation or acceptance, directly or indirectly, of an 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.”

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<sup>13</sup> This article repeats language used in the Organized Crime Convention, for example, article 6, paragraph 2 (f).

<sup>14</sup> The content of this article will be considered during the discussion on article 40.