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

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Item 3 of the provisional agenda\*

### Consideration of the draft United Nations Convention against Corruption, with particular emphasis on articles 2 (remaining definitions), 3, 4, 20, 30, 32-39 and 40-85

## Revised draft United Nations Convention against Corruption

### Preamble<sup>1</sup>

[*The General Assembly*], [*The States Parties to this Convention*],

*Concerned* about the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

*Concerned also* about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

*Concerned further* that cases of corruption, especially on a large scale, tend to involve vast quantities of funds, which constitute a substantial proportion of the resources of the countries affected, and that their diversion causes great damage to the political stability and economic and social development of those countries,

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\* A/AC.261/10.

<sup>1</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14). On the recommendation of its Chairman, the Ad Hoc Committee at its first session decided that it would consider the preamble at the end of the negotiation process, possibly together with the final clauses of the draft convention.



*Convinced* that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples,

*Convinced also* that, since corruption is a phenomenon that currently crosses national borders and affects all societies and economies, international cooperation to prevent and control it is essential,

*Convinced further* of the need to provide, upon request, technical assistance designed to improve public management systems and to enhance accountability and transparency,

*Considering* that globalization of the world's economies has led to a situation where corruption is no longer a local matter but a transnational phenomenon,

*Bearing in mind* that the eradication of corruption is a responsibility of States and that they must cooperate with one another if their efforts in this area are to be effective,

*Bearing also in mind* ethical principles, such as, inter alia, the general objective of good governance, the principles of fairness and equality before the law, the need for transparency in the management of public affairs and the need to safeguard integrity,

*Commending* the work of the Commission on Crime Prevention and Criminal Justice and the Centre for International Crime Prevention of the Office on Drugs and Crime of the Secretariat in combating corruption and bribery,

*Recalling* the work carried out by other international and regional organizations in this field, including the activities of the Council of Europe, the European Union, the Organisation for Economic Cooperation and Development and the Organization of American States,

*Welcoming* multilateral initiatives to combat corruption, including, inter alia, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1977,<sup>2</sup> the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,<sup>3</sup> the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,<sup>4</sup> the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption, adopted by the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997,<sup>5</sup> the Manila Declaration on the Prevention and Control of Transnational Crime, adopted by the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Manila from 23 to 25 March 1998,<sup>6</sup> the Criminal Law Convention on

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<sup>2</sup> See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

<sup>3</sup> See E/1996/99.

<sup>4</sup> *Official Journal of the European Communities*, C 195, 25 June 1997.

<sup>5</sup> E/CN.15/1998/6/Add.1, chap. I.

<sup>6</sup> E/CN.15/1998/6/Add.2, chap. I.

Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,<sup>7</sup> and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,<sup>8, 9</sup>

[Adopts the United Nations Convention against Corruption, annexed to the present resolution.]

[Have agreed as follows:]

## I. General provisions

### *Article 1*

#### *Statement of purpose*

The purposes of this Convention are:

(a) To promote [propagate] [encourage] and strengthen measures to prevent [detect] combat [and eradicate] [more efficiently and effectively] corruption [in all its forms] [and criminal acts and other offences related specifically to corruption];

(b) To promote, [encourage] facilitate and support international cooperation in the [prevention of and] fight against corruption, including the return of the proceeds of corruption [to their countries of origin] [to their original sources];

(c) To promote integrity, ethical conduct [the rule of law, transparency and accountability] and good public and private governance [good management of public affairs].

### *Article 2*

#### *Definitions [Use of terms]*<sup>10</sup>

For the purpose of this Convention:

(a) “Public official” shall mean any person holding a [legislative,] executive or administrative, judicial [or military] office [in] [of] a State Party, at any level of its hierarchy, whether appointed or elected, and any other person performing a public function for the State Party, [including for a public agency, public or mixed enterprise, public institution or autonomous body] [as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party]. [“Public official” shall also mean any person who enters into contract or is engaged in any way with any State Party for the purpose of carrying out any function, even if he or she does not, according to the law of the contracting State Party or the law of his or her State, enjoy the status of public official or citizen of that State Party.]

<sup>7</sup> Council of Europe, *European Treaty Series*, No. 173.

<sup>8</sup> *Ibid.*, No. 174.

<sup>9</sup> See General Assembly resolutions 51/59 and 53/176.

<sup>10</sup> The text of subparagraphs (a)-(d) is the product of the second reading of the draft convention, carried out by the Ad Hoc Committee at its third session. The text of the remaining subparagraphs was produced by the Vice-Chairman with responsibility for this chapter of the draft convention, in an effort to reflect proposals submitted by Governments during the third session of the Ad Hoc Committee and thus facilitate consideration by the Ad Hoc Committee at its fourth session.

["Public official" shall also mean any person performing any function for a municipal or local self-government body];

(b) "Public function" shall mean any temporary or permanent, paid or unpaid activity performed by a natural or legal person in the name of the State or in the service of the State or its agencies, enterprises, bodies or institutions, including mixed institutions, at any level of its hierarchy];

(c) "Foreign public official" shall mean any person holding a [legislative,] executive or administrative, judicial [or military] office of a foreign State, whether appointed or elected, and any other person performing a public function for a foreign State, [including for a public agency, public or mixed enterprise, public institution or autonomous body,] [as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party] [as defined in the respective domestic law of the States Parties that have jurisdiction over the offences involving that person in accordance with article [19 bis] of this Convention and as applied in the pertinent area of law of that State]. [It shall also mean any person who enters into contract or is engaged in any way by a foreign State for the purpose of carrying out any function, even if he or she does not, according to the law of the contracting State Party or the law of his or her State, enjoy the status of public official or citizen of that State Party.] [It shall also mean any official of an international organization];

(d) "Official of [a public]<sup>11</sup> international organization" shall mean:

(i) Any official or other contracted employee within the meaning of the status of public officials, [enjoying a status comparable to that of a public official in a State Party]<sup>12</sup> of any public international, regional or supranational organization [of any organization established, for whatever purpose, by two or more States] [whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention];

(ii) Any person in the service of such an organization, whether seconded or not, who carries out functions equivalent to those performed by the officials or other servants of that organization;]

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<sup>11</sup> Proposed by Pakistan at the first session of the Ad Hoc Committee.

<sup>12</sup> Proposed by Pakistan at the first session of the Ad Hoc Committee.

(iii) Any agent of such an organization and any other person not being in its service [not enjoying the status of an international official] but carrying out a function of that organization;

(e) “International organization” shall mean a [public,] intergovernmental, [private or non-governmental] organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention;<sup>13</sup>

(f) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets [or purporting to demonstrate or relating to ownership or other rights pertaining to such assets];

(g) “Proceeds of crime” shall mean any property [rights or privileges]<sup>14</sup> derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;

(h) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority [and for a renewable period of not more than six months];<sup>15</sup>

(i) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority [competent court]<sup>16</sup> [including delivery, as appropriate];<sup>17</sup>

(j) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence [in accordance with this Convention]<sup>18</sup> as defined in article [...] [Criminalization of the laundering of proceeds of crime] of this Convention;

<sup>13</sup> Several delegations were of the view that this definition was not necessary, as the matter was adequately covered with the definition of “official of an international organization”. The question of inclusion of private or intergovernmental organizations, as well as the use of the word “public” to qualify an intergovernmental organization, was debated extensively at the first and third sessions of the Ad Hoc Committee. It was deemed appropriate to revert to consideration of this definition at a later stage, including taking a decision on whether to retain it. During the second reading of the draft text, the Vice-Chairman with responsibility for this chapter of the draft convention indicated his intention to conduct open-ended informal consultations during the fourth session of the Ad Hoc Committee, with a view to finding a way of merging this subparagraph with subparagraph (d). He further indicated that the product of those consultations would be placed in square brackets for further consideration at the third reading of the draft convention, as many delegations wished to have this subparagraph deleted.

<sup>14</sup> Proposed by Lebanon at the third session of the Ad Hoc Committee (A/AC.261/L.114).

<sup>15</sup> Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

<sup>16</sup> Proposed by the Libyan Arab Jamahiriya at the third session of the Ad Hoc Committee (A/AC.261/L.143).

<sup>17</sup> Mexico had proposed the insertion of these words at the first session of the Ad Hoc Committee. Yemen supported this proposal at the third session of the Ad Hoc Committee.

<sup>18</sup> Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

(k) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into [into or through]<sup>19</sup> the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence [in accordance with this Convention];<sup>20</sup>

(l) “Corruption” shall mean engaging in or inducing acts that constitute improper performance of duty [or abuse of a position of authority], including acts of omission, in expectation of an advantage, or to obtain an advantage, directly or indirectly promised, offered or requested, or following acceptance of an advantage directly or indirectly given, whether for oneself or on behalf of another;<sup>21</sup>

(m) “Corruption offence” shall mean any offence that constitutes unlawful use by a public official of authority officially delegated to him or her or of his or her official powers or associated possibilities for the purpose of satisfying his or her private interest or the interest of third parties (referred to as “acts of corruption”) or the performance by him or her of other acts that create conditions for the commission of acts of corruption or conceal or facilitate such acts (referred to as “other acts relating to corruption”);<sup>22</sup>

(n) “Act of corruption” shall mean [...];<sup>23</sup>

(o) “Suspicious transaction” shall mean any unusual transaction that, by reason of its amount, characteristics and periodicity, is inconsistent with the customer’s business activity, exceeds the normally applicable parameters of the market or has no clear legal basis [or is based on fictitious or bogus contracts or deals]<sup>24</sup> and could constitute or be connected with unlawful activities in general;<sup>25</sup>

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<sup>19</sup> Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

<sup>20</sup> Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

<sup>21</sup> The text of this subparagraph was developed and proposed by the Vice-Chairman with responsibility for this chapter of the draft convention, in consultation with the delegations of Azerbaijan, China, Slovenia and Ukraine. It was not discussed at the first session of the Ad Hoc Committee. The Philippines proposed the following formulation:

“‘Corruption’ shall mean the promising, requesting, offering, giving or accepting, directly or indirectly, of an undue advantage or the prospect thereof that distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.”

Colombia suggested that if a sufficiently broad definition could not be agreed upon, the convention should not include a definition of “corruption”. Instead, the future convention should identify and criminalize acts of corruption in the chapter on criminalization. During the third session of the Ad Hoc Committee, several more proposals were made, including by Algeria (A/AC.261/L.96) and by Chile (A/AC.261/L.117). The Vice-Chairman with responsibility for this chapter indicated his intention to conduct open-ended informal consultations during the fourth session of the Ad Hoc Committee in order to seek a resolution of this matter.

<sup>22</sup> Proposed by Ukraine at the third session of the Ad Hoc Committee (A/AC.261/L.139).

<sup>23</sup> Proposed by Colombia (A/AC.261/IPM/14).

<sup>24</sup> Proposed by Lebanon at the third session of the Ad Hoc Committee (A/AC.261/L.114).

<sup>25</sup> Proposed by Peru at the first session of the Ad Hoc Committee, at the request of the Chairman (A/AC.261/L.13).

(p) “Legal person” shall mean those entities, organizations or moral persons, in the public or private sector, defined as such in the law of States Parties;<sup>26</sup>

(q) “Preventive measures”;<sup>27</sup>

(r) “Transfer of assets derived from acts of corruption” shall mean [...];<sup>28</sup>

(s) “Recovery of assets” shall mean the procedure for the transfer or conveyance of all the property or assets, their proceeds or revenue, acquired through acts of corruption covered by this Convention from the receiving State Party where the assets are located<sup>29</sup> to the affected State Party, even if they have been transformed, converted or disguised;<sup>30</sup>

(t) “Illicit enrichment” shall mean [...];<sup>31</sup>

(u) “Conflict of interest” shall mean a situation in which the overlapping of the private interests and public functions of a public official results in that person obtaining an unlawful benefit;<sup>32</sup>

(v) “Money-laundering” shall mean:

(i) The conversion or transfer of property, in the knowledge that it is the proceeds of an offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the consequences of his or her conduct;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of property, or of rights with respect to it, in the knowledge that such property is the proceeds of an offence;

(iii) The acquisition, possession or use of property, in the knowledge, at the time of receipt, that such property is the proceeds of an offence;

(iv) Participation in or association with the commission or attempted commission and also aiding, facilitating, inducing or counselling the commission of any offence related to the laundering of money derived from corruption, as well as the administration, custody, disposition, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property:

<sup>26</sup> Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

<sup>27</sup> Proposed by Austria and the Netherlands (A/AC.261/IPM/4).

<sup>28</sup> Proposed by Colombia (A/AC.261/IPM/14).

<sup>29</sup> This phrase is included in order to obviate the need to define the receiving State Party.

<sup>30</sup> Proposed by Colombia at the third session of the Ad Hoc Committee (A/AC.261/L.94).

<sup>31</sup> Proposed by Colombia (A/AC.261/IPM/14).

<sup>32</sup> Proposed by Argentina at the third session of the Ad Hoc Committee (A/AC.261/L.102).

a. In the knowledge that such property is the proceeds of an offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person involved in the commission of a corruption offence to evade the legal consequences of his or her action;

b. Which derives from or is the proceeds of a corruption offence if the person involved is obliged, by virtue of his or her profession, position or office, to take the measures necessary to verify the licit origin of such property and has not done so;<sup>33</sup>

(w) “Private official” shall mean any employee, executive, manager or official of any entity, organization, enterprise or private legal person other than those in which public officials exercise their functions;<sup>34</sup>

(x) “Effective collaborator”<sup>35</sup> shall mean any natural or legal person who provides relevant help in the investigation or prosecution of a corruption offence;<sup>36, 37, 38</sup>

### *Article 3* *Scope of application*<sup>39</sup>

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of [and recovery of assets and proceeds derived from]<sup>40</sup> corruption and [other]<sup>41</sup> criminal acts related specifically to corruption [and to the confiscation and return of assets and proceeds derived from corruption],<sup>42</sup> irrespective of whether they involve public officials or have been committed in the course of business activity.<sup>43</sup>

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<sup>33</sup> Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

<sup>34</sup> Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

<sup>35</sup> It is suggested that the words “effective collaborator” should replace the word “whistle-blower” wherever it appears in the draft convention.

<sup>36</sup> Proposed by Chile at the third session of the Ad Hoc Committee (A/AC.261/L.117).

<sup>37</sup> At the third session of the Ad Hoc Committee, the Czech Republic proposed to reorder the subparagraphs of article 2 into several paragraphs in order to obtain a more logical structure (A/AC.261/L.98). The Vice-Chairman with responsibility for this chapter of the draft convention recommended that the Ad Hoc Committee consider this proposal during the third reading.

<sup>38</sup> The Vice-Chairman with responsibility for this chapter of the draft convention recommended that the Ad Hoc Committee keep in mind the existence of proposed definitions in article 63 of the draft text (A/AC.261/3/Rev.1/Add.1) and consider them in the context of article 2 during the third reading.

<sup>39</sup> The text of this article was amended by the Vice-Chairman with responsibility for this chapter of the draft convention in an effort to reflect proposals submitted by Governments during the third session of the Ad Hoc Committee and thus facilitate consideration by the Ad Hoc Committee at its fourth session.

<sup>40</sup> Proposed by Algeria at the third session of the Ad Hoc Committee (A/AC.261/L.96).

<sup>41</sup> Proposed by Belarus at the third session of the Ad Hoc Committee (A/AC.261/L.91).

<sup>42</sup> Proposed by the Libyan Arab Jamahiriya at the third session of the Ad Hoc Committee (A/AC.261/L.143).

<sup>43</sup> At the first session of the Ad Hoc Committee, some delegations expressed the view that this paragraph, especially its last phrase, might be construed as pre-empting the scope of the articles on criminalization or otherwise making assumptions about issues that had not yet been determined. Pakistan proposed that “concealment of proceeds of corruption” be added as an element of the scope of the draft convention.



2. For the purposes of implementing this Convention, it shall not be necessary for the offences set forth in it to result in damage or harm to state property.

[3. This Convention shall not apply to cases in which an act of corruption is committed in one State, the alleged criminal is a national of that State and is present in the territory of that State and no other State is entitled to exercise its jurisdiction in accordance with article [...] [Jurisdiction], with the exception of the provisions of articles [...] [Mutual legal assistance], [...] [Collection, exchange and analysis of information on the nature of corruption], [...] [Training and technical assistance] and [...] [Preventive measures] of this Convention.]<sup>44</sup>

*Article 4*  
*Protection of sovereignty*<sup>45</sup>

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention [and non-interference]<sup>46</sup> in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.<sup>47</sup>

[3. The provision of this article is a fundamental provision and any provision of any article contrary to it shall be disregarded.]<sup>48</sup>

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<sup>44</sup> At the first session of the Ad Hoc Committee, it was decided that the text of this paragraph, which appeared in the previous version of the draft text as a second option to paragraph 1, should be retained in square brackets until the determination of other substantive provisions of the convention, which would make possible a decision regarding its desirability. Several delegations suggested, however, that this paragraph might be complementary to the previous paragraphs of this article. Some delegations questioned the need for a provision on scope, given the structure of the draft convention.

<sup>45</sup> The text of this article was amended by the Vice-Chairman with responsibility for this chapter of the draft convention, in an effort to reflect proposals submitted by Governments during the third session of the Ad Hoc Committee and thus facilitate consideration by the Ad Hoc Committee at its fourth session.

<sup>46</sup> Proposed by Algeria at the third session of the Ad Hoc Committee (A/AC.261/L.96).

<sup>47</sup> At the first session of the Ad Hoc Committee, the delegation of the Philippines proposed the inclusion of a third paragraph to this article, which would read as follows (A/AC.261/L.14):

“3. While the full implementation of all provisions in this Convention in the respective jurisdictions of all the States Parties concerned is ideal, it shall not serve as a precondition for returning, to their country of origin, funds derived from or obtained through acts of corruption.”

<sup>48</sup> Proposed by Yemen at the third session of the Ad Hoc Committee (A/AC.261/L.105).

## II. Preventive measures<sup>49</sup>

[*Article 4 bis*<sup>50</sup>  
[...]]

Each State Party agrees, to the extent appropriate and consistent with its legal system, to consider<sup>51</sup> to implement those preventive measures set out in this Convention by legislative, administrative or other appropriate measures.]

### *Article 5*<sup>52</sup> *Preventive anti-corruption policies*

1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies. Those policies shall enable [the participation of civil society] [public involvement] [the participation of citizens] and reflect the principles of rule of law, [good governance] [good management of the public service] integrity, transparency and [accountability].<sup>53</sup>

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<sup>49</sup> A number of delegations noted that a number of the preventive measures proposed (such as articles 5, 6, 11 and 12) might envisage governmental action that traditionally lay within the responsibility of their constituent states. Accordingly, those delegations observed that the situation of federal States should be taken into account in the further development of these provisions.

<sup>50</sup> Proposed by China at the first session of the Ad Hoc Committee (A/AC.261/L.10). Following the second reading of the draft text, at the third session of the Ad Hoc Committee, consideration of this article was postponed until the third reading of the draft text, to be undertaken in the light of the consideration of the other articles contained in this chapter and in conjunction with proposals submitted at the third session of the Ad Hoc Committee by the United States of America (A/AC.261/L.116) and by China, India, Indonesia, the Islamic Republic of Iran, Lebanon, Malaysia, Pakistan, Viet Nam and Zimbabwe (A/AC.261/L.124).

<sup>51</sup> During the discussion of this proposal at the first session of the Ad Hoc Committee, many delegations were of the view that the provision of article 4 was sufficient to meet the concerns that this proposal intended to satisfy. Other delegations were of the view that if the article were retained, it should be made more mandatory and less restrictive by deleting the words “to the extent appropriate” and “to consider”.

<sup>52</sup> The text of this article (A/AC.261/L.122) is the product of an informal working group established by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft convention at the third session of the Ad Hoc Committee, after the second reading of the draft text. The Ad Hoc Committee had the opportunity to review the revised draft produced by the informal working group. The draft text of this article incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman.

<sup>53</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, some delegations proposed that the second sentence of paragraph 1 be moved to the preamble of the draft convention.

2. Each State Party shall endeavour to develop and evaluate projects and to establish and promote best practices aimed at the prevention of corruption [and criminal acts related to corruption].<sup>54</sup>

3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to detecting their vulnerability to corruption<sup>55</sup> [and criminal acts related to corruption].

4. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration shall include participation in international programmes and projects aimed at the prevention of corruption [and criminal acts related to corruption].

*Article 5 bis*<sup>56</sup>

*[Preventive] anti-corruption bodies*

1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, ensure the existence of a body or bodies to prevent [and detect] [and identify] [and contribute to the detection of] corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention;

(b) Overseeing and coordinating the implementation of those policies, where appropriate;<sup>57</sup>

[(c) Providing one or more contact points to which any natural or legal person may report [, including anonymously,] [with an appropriate guarantee of confidentiality] information concerning acts of corruption;]

(d) Increasing and disseminating knowledge about the prevention of corruption;

[(e) Establishing institutional bodies to set public auditing standards, placing special emphasis on performance auditing.]

<sup>54</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, some delegations proposed to reconsider the wording of paragraphs 2, 3 and 5 after consideration of the definition of “corruption”.

<sup>55</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, some delegations stated that they preferred the words “determining their adequacy to fight corruption” to the words “detecting their vulnerability to corruption”.

<sup>56</sup> The text of this article (A/AC.261/L.104) is the product of an informal working group established by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft convention at the third session of the Ad Hoc Committee, after the second reading of the draft text. The Ad Hoc Committee had the opportunity to review the revised draft produced by the informal working group. The draft text of this article incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman.

<sup>57</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, it was suggested that subparagraphs (a) and (b) should be merged.

2. Each State Party shall grant the bodies referred to in paragraph 1 of this article [the necessary] [adequate] [the necessary operational] independence, in accordance with the fundamental principles of its legal system [, to enable them to carry out their functions effectively and free from any undue influence]. Each State Party shall endeavour to provide the necessary material means and specialized staff, as well as the training that such staff may require to carry out their functions.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing a policy on combating corruption.

*Article 6<sup>58</sup>*  
*Public sector*

1. Each State Party shall, where applicable and in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, maintaining,<sup>59</sup> promotion [and retirement] of civil servants and, where appropriate, other non-elected public officials:<sup>60</sup>

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes for public officials to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.

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<sup>58</sup> The text of this article (A/AC.261/L.112) is the product of an informal working group established by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft convention at the third session of the Ad Hoc Committee, after the second reading of the draft text. The Ad Hoc Committee had the opportunity to review the revised draft produced by the informal working group. The draft text of this article incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman.

<sup>59</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, several delegations expressed the view that this was not the appropriate term and that another should be found during the third reading.

<sup>60</sup> The use of the terms in this article should be re-examined after the second reading of article 2 (Definitions [Use of terms]).

[2. The existence of the systems referred to in paragraph 1 of this article shall not prevent States Parties from maintaining or adopting specific legitimate measures for disadvantaged groups [affirmative action] [in order to ensure adequate representation of minorities].]

3. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest by requiring [appropriate] public officials [, where appropriate,] [, where applicable,] to declare [, upon taking office and periodically thereafter,] their financial interests<sup>61</sup> [, assets, debts] and sources of income and, where appropriate, [by making public the information contained in such declarations].<sup>62, 63</sup>

*[Article 6 bis  
Elected public officials<sup>64</sup>*

In addition to the measures provided for in article 6,<sup>65</sup> each State Party shall also take appropriate legislative and administrative measures<sup>66</sup> consistent with the objectives of the present Convention to prescribe the qualifications and other criteria for the selection of public officials to be appointed to public office by a process of election.]

<sup>61</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, several delegations expressed the view that this term was not appropriate. Instead, these delegations proposed the use of the term “assets” or the term “patrimony”. One delegation proposed that this paragraph also make provision for the declaration of incompatibilities.

<sup>62</sup> The declaration of financial interests and so forth could also be appropriate for elected public officials, so the limitation to “non-elected public officials” present in the text introduced by Botswana is not necessary. It is for the States Parties themselves to decide for which public functions it is appropriate to make declarations of financial interests and so forth. Elected officials, such as members of parliament, local councillors and mayors, should not be excluded beforehand.

<sup>63</sup> During the second reading of the draft text at the third session of the Ad Hoc Committee, Pakistan, Peru and the Philippines submitted a proposal for a new article 6 bis (see A/AC.261/L.126).

<sup>64</sup> Proposed by Pakistan, Peru and the Philippines at the third session of the Ad Hoc Committee, pursuant to a request by the Chairman, after several delegations had expressed their support for it (A/AC.261/L.126). The proposed new article is intended to establish broadly the criteria for the selection of elected public officials. As article 6 (Public sector) deals only with government public officials, without this new article there would be an omission in the draft convention because in article 2 (Definitions [Use of terms]), the definition of “public official” includes “elected public official”. The proposal was not considered by the Ad Hoc Committee at its third session.

<sup>65</sup> The parameters for the appointment of civil servants set out in article 6 would also be applicable, where appropriate, to elected public officials.

<sup>66</sup> The criteria for the selection of an elected public official set out in this article have intentionally been drafted in general terms in order to permit greater flexibility in the drafting of local election laws.

*Article 7<sup>67</sup>*  
*Codes of conduct for public officials*

[1. In order to [foster a culture of rejection of corruption] [fight corruption], each State Party shall promote ethical behaviour and the development of integrity among its public officials [by encouraging honesty and responsibility].]

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions. [Those codes or standards shall be intended to prevent conflicts of interest and to promote honesty and responsibility in the performance of public functions.]<sup>68</sup>

3. For the purposes of implementing the provisions of this article, States Parties shall, where appropriate and in accordance with the fundamental principles of their domestic legal systems, take account of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials that appears in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider establishing measures and systems to require public officials to report to appropriate authorities acts of corruption committed in the performance of public functions that come to their notice.

[5. Each State Party shall take such measures as may be appropriate to ensure that no prejudice is caused to or sanction taken against public officials for the mere fact that they have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an illegal or criminal activity, including those involving the public service.]<sup>69</sup>

6. In addition, each State Party shall, where appropriate, establish measures and systems to require public officials to make declarations to appropriate authorities regarding:

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<sup>67</sup> The text of this article (A/AC.261/L.115) is the product of an informal working group established by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft convention at the third session of the Ad Hoc Committee, after the second reading of the draft text. The Ad Hoc Committee had the opportunity to review the revised draft produced by the informal working group. The draft text of this article incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman.

<sup>68</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, it was suggested that paragraph 1 (d) of article 6, dealing with education and training programmes for public officials, should make specific reference to education in relation to codes and standards of conduct, perhaps by adding the following sentence: "Such programmes should make reference to codes or standards of conduct in applicable areas."

<sup>69</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, it was agreed that paragraph 5 was important, but delegations held the view that it did not, in fact, address codes of conduct. It was proposed that it be moved to another article, either article 6 (Public sector), 36 (Measures against corruption) or 43 (Protection of witnesses and victims). Some delegations also proposed that paragraph 5, together with paragraph 4, be moved to a separate, two-paragraph article, numbered 7 bis; other delegations, however, held the opinion that they should not be so closely linked.

[(a) Employment, investments [or responsibilities]<sup>70</sup> that may constitute [a conflict of interest] with respect to their functions as public officials;]

(b) [Substantial] gifts or benefits that may constitute [a conflict of interest] with respect to their functions as public officials.

7. States Parties shall consider adopting, in accordance with fundamental principles of their domestic law, disciplinary [or other] measures against public officials who violate the codes or standards established in accordance with this article.

*Article 8*<sup>71</sup>

*Public procurement and public financial management*<sup>72</sup>

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish [, where appropriate,] procurement rules, with appropriate threshold values, based on transparency, competition and objective criteria in decision-making. Such rules shall include, inter alia:

(a) Wide public distribution of information on both invitations to tender and the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) Use of predetermined and objective selection and award criteria and tendering rules that are transparent and made known in advance to the public, including potential tenderers;

(c) The requirement to base public procurement decisions on objective and transparent reasons in order to facilitate the subsequent verification of the correct application of the rules;

(d) The availability in each State Party of an effective system of appeal to ensure legal recourse and remedies in the event that the rules established pursuant to this paragraph are not followed;

<sup>70</sup> The words “or responsibilities” are included to address the issue previously addressed in paragraph 2 of article 10, which is to be moved. They appear in square brackets as it has not been decided to which article they are to be moved. Some delegations held the view that the word “responsibilities” should be further elucidated.

<sup>71</sup> The text of this article (A/AC.261/L.148) is the product of an informal working group established by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft convention at the third session of the Ad Hoc Committee after the second reading of the draft text. The Ad Hoc Committee had the opportunity to review the revised draft produced by the informal working group. The draft text of this article incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman. Yemen submitted a proposal on this article at the third session of the Ad Hoc Committee (A/AC.261/L.108).

<sup>72</sup> Some delegations called for consistency with the terminology used in the context of the World Trade Organization in connection with issues covered by this article. Some delegations pointed out the need to foresee exceptions for the procurement standards found in this article. For example, those delegations mentioned the need for flexibility in procurements involving *de minimis* amounts. During the second reading of the draft text, at the third session of the Ad Hoc Committee, some delegations also expressed the view that the article should provide for exceptions from the standards foreseen for procurement related to national security.

(e) Measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take all relevant measures to promote [ensure]:

(a) The existence of and compliance with transparent procedures for the management of public finances, including:

(i) The preparation and approval of the national budget;

(ii) Effective and efficient systems of risk management and internal control;

(iii) [The existence of] a system of internal audit under the control and direction of audit committees within public institutions;

(b) Timely reporting on expenditure and revenue and timely submission of financial statements to ensure effective and objective scrutiny of public finances;

(c) Adequate powers of remedy in the case of failure to comply with the requirements established in accordance with this paragraph.

3. Each State Party shall [, in accordance with the fundamental principles of its legal system,] take the necessary measures to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities [for executing and monitoring the collection of public revenues] with a view to preventing corruption.

4. Each State Party shall take the necessary measures, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts performed for the purpose of committing any of the offences established in articles [...] of this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of book-keeping documents earlier than the time prescribed by law.

5. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for the omissions and falsifications referred to in paragraph 4 of this article.

6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability [responsibility] of the public sector is strengthened in order to minimize acts of corruption.



*Article 9<sup>73</sup>*  
*Public reporting*

1. Taking into account the need to combat corruption, States Parties shall, in accordance with fundamental principles of their domestic law, take such measures as may be necessary to ensure transparency in their public administrations, especially with regard to their organization, functioning and decision-making processes.

2. To that end, States Parties shall:

(a) Adopt procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of their public administrations and on decisions and legal acts that concern members of the public;

(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities;

(c) Publish periodic reports, including reports on the risks of corruption in their public administrations.

*Article 9 bis<sup>74</sup>*  
*Measures with respect to the judiciary*

1. Bearing in mind the crucial role of the judiciary in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary [in the exercise of their functions]. Such measures may include rules and procedures with respect to the conduct of members of the judiciary.

2. Measures taken pursuant to paragraph 1 of this article may<sup>75</sup> by analogy be introduced and applied within the public or state prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

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<sup>73</sup> The text of this article (A/AC.261/L.145) 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. The Ad Hoc Committee did not review this text after its distribution.

<sup>74</sup> The text of this article (A/AC.261/L.111) is the product of an informal working group established by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft convention at the third session of the Ad Hoc Committee after the second reading of the draft text. The Ad Hoc Committee had the opportunity to review the revised draft produced by the informal working group. The draft text of this article incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman.

<sup>75</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, one delegation suggested replacing the word “may” with the word “shall”.

*Article 10<sup>76</sup>*  
*Funding of political parties<sup>77</sup>*

1. Each State Party shall adopt, maintain and strengthen<sup>78</sup> measures and regulations concerning the funding of political parties. Such measures and regulations shall serve:

- (a) To prevent conflicts of interest;<sup>79</sup>
- (b) To preserve the integrity of democratic political structures and processes;
- (c) To proscribe<sup>80</sup> the use of funds acquired through illegal and corrupt practices to finance political parties; and<sup>81</sup>
- (d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.<sup>82</sup>

2. Each State Party shall take measures to avoid as far as possible conflicts of interest owing to simultaneous holding of elective office and responsibilities in the private sector.<sup>83</sup>

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<sup>76</sup> Proposed by Austria, France and the Netherlands to replace the previous version of article 10 (A/AC.261/L.21). The revised proposal was intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session. Discussions and consultations continued during the second reading of the draft text at the third session of the Ad Hoc Committee. Views of delegations continued to diverge on this article, with a number of delegations suggesting its deletion. Several delegations, while supporting the goals behind the article, questioned whether negotiation of such a provision would be practical in the context of the future convention, given the enormous variations in political systems. For those reasons, a number of delegations felt that the text should be placed in square brackets, not only in order to reflect the fact that no amendments had resulted from the second reading, but also to signal the need for the Ad Hoc Committee to decide whether to retain the article.

<sup>77</sup> One delegation suggested that, if this article were included, it would necessitate a definition of the term "political party".

<sup>78</sup> While expressing its preference for deletion, one delegation suggested that an acceptable formulation would be to make this article optional by using the formulation "may adopt, in accordance with fundamental principles of domestic law".

<sup>79</sup> Several delegations called for this concept to be better defined.

<sup>80</sup> Some delegations suggested replacing this word with the word "prohibit" or the words "eliminate the possibility of".

<sup>81</sup> Azerbaijan proposed to amend subparagraphs (a)-(c) to read (A/AC.261/L.37):

“(a) To prevent the exercise of improper, corrupting influence;

“(b) To prevent the violation through corrupt acts of the independence and integrity of democratic and other processes;

“(c) To preclude the use of funds acquired through illegal and corrupt practices to finance political parties; and”

<sup>82</sup> Egypt proposed the addition of the words "and their sources" at the end of this subparagraph.

<sup>83</sup> Argentina proposed the addition of a paragraph that would read as follows:

“Political parties shall make public the origin and destination of their funds and property, subject to the constitution and fundamental legal principles of each State Party.”

*Article 11*<sup>84</sup>  
*Private sector*

1. Each State Party shall endeavour, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector through measures that focus, inter alia, on:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest;

[(c) Establishing an adequate supervisory framework for financial institutions, based on the principles of transparency, accountability and sound corporate governance and with appropriate capacity for international collaboration on cross-border financial transactions;]<sup>85</sup>

(d) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities and of holders of the capital and shares of corporate entities;

(e) Preventing the misuse of public procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(f) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.

2. Each State Party shall deny the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with article [...] [Criminalization of corruption involving a public official] or [...] [Criminalization of corruption in the private sector]<sup>86</sup> of this Convention, and, where appropriate, other expenses incurred in the furtherance of corrupt conduct.<sup>87, 88</sup>

<sup>84</sup> The text of this article (A/AC.261/L.125) 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. The Ad Hoc Committee did not review this text after its distribution.

<sup>85</sup> Subparagraph (c) might be deleted after consideration of article 14 (Measures to combat money-laundering).

<sup>86</sup> It was also suggested during the discussion that the title of these articles should be reviewed and that the word "corruption" should be replaced with the word "bribery".

<sup>87</sup> Reservations were expressed by one delegation regarding the mandatory nature of paragraph 2.

<sup>88</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, Colombia proposed the insertion of new article 11 bis, entitled "Code of business ethics" (see A/AC.261/L.94, where the new article is erroneously identified as article 8 bis).

*Article 12<sup>89</sup>*

*Accounting standards for [the] private sector*

1. In order to prevent corruption effectively, each State Party shall take the necessary measures, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in articles [...] of this Convention:<sup>90</sup>

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects; and
- (e) The use of false documents.

2. Each State Party shall establish effective, proportionate and dissuasive civil, administrative or criminal penalties for the omissions and falsifications referred to in paragraph 1 of this article.

3. Each State Party shall take such measures as may be necessary, in accordance with the fundamental principles of its domestic legal system, to ensure:

(a) That private entities,<sup>91</sup> taking into account their size, have sufficient internal accounting controls to assist in preventing and detecting acts of corruption; and

(b) The accounts and required financial statements of such private entities are subjected to appropriate auditing and certification procedures.

*Article 13<sup>92</sup>*

*Participation of society*

1. Each State Party shall take appropriate measures within its means to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise

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<sup>89</sup> The text of this article (A/AC.261/L.134) 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. The Ad Hoc Committee did not review this text after its distribution.

<sup>90</sup> Reference to other articles in the draft convention can only be made once chapter III, on criminalization, has been finalized.

<sup>91</sup> The term “private entities” will need to be defined and discussed further when this proposal is considered.

<sup>92</sup> The text of this article (A/AC.261/L.142) 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. The Ad Hoc Committee did not review this text after its distribution.

public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by measures such as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring effective access to information for the public;
- (c) Protection of persons who have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an offence as defined in this Convention;
- (d) Public information activities that contribute to non-tolerance of corruption, as well as programmes of public education, including school and university curricula.

2. States Parties shall not obstruct the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but they shall only be those which are provided for by law and which are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*) or of public health or morals.

States Parties shall further encourage the media to disseminate information on corruption.

3. Each State Party shall take all appropriate measures to ensure that the anti-corruption bodies referred to in article 5 bis [Anti-corruption bodies] of this Convention are known to the public and shall provide access to those bodies for the reporting, including anonymously, of any incidents that may be considered to constitute an offence as defined in this Convention.

*Article 14<sup>93, 94</sup>*

*Measures to combat money-laundering [resulting from corruption]<sup>95</sup>*

1. Each State Party:

<sup>93</sup> The proposal was submitted by the Vice-Chairman acting as Chairman of the Ad Hoc Committee during its deliberations on this chapter of the draft convention, pursuant to an initial discussion during the second reading of the draft text, at the third session of the Ad Hoc Committee.

During this discussion, several delegations expressed the wish to use the text of article 7 of the United Nations Convention against Transnational Organized Crime (the “Organized Crime Convention”) (General Assembly resolution 55/25, annex I). Consequently, the proposal is based on article 7 of that Convention, with variations or additions included in square brackets. The Ad Hoc Committee did not review this proposal (A/AC.261/L.123) after its distribution.

<sup>94</sup> During the second reading of the draft text, at the third session of the Ad Hoc Committee, it was noted that article 7 of the Organized Crime Convention was accompanied by interpretative notes for the *travaux préparatoires* (A/55/383/Add.1). Such interpretative notes should also accompany any restatement of article 7 in the draft convention. This question is to be taken up during the third reading of the draft text.

<sup>95</sup> Proposed by Lebanon.

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions [and for natural or legal persons engaged in professional or business activities, including non-profit organizations]<sup>96</sup> [persons or legal entities that provide formal or informal services for the transmission of money or value]<sup>97</sup> and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect [money-laundering mechanisms]<sup>98</sup> all forms of money-laundering, which regime shall emphasize requirements for customer [or beneficial owner]<sup>99</sup> identification, record-keeping and the reporting of suspicious [or unusual]<sup>100</sup> transactions [and assessment of the legitimacy of sources];<sup>101</sup>

(b) Shall, without prejudice to article [...] [Mutual legal assistance] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, [seizure,]<sup>102</sup> analysis and [, where appropriate,]<sup>103</sup> dissemination of information [received through reports of suspicious or unusual transactions]<sup>104</sup> regarding potential money-laundering;

[(c) Shall consider the possibility of appointing compliance officials as an executive operational link in its banking and non-banking entities.]<sup>105</sup>

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

[3. States Parties shall consider implementing feasible measures to require financial institutions, including money remitters:

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<sup>96</sup> Departure from the text of article 7 of the Organized Crime Convention included in the proposed text of article 14 as it appears in document A/AC.261/3/Rev.1 and Corr.1.

<sup>97</sup> Proposed by the United States.

<sup>98</sup> Departure from the text of article 7 of the Organized Crime Convention included in the proposed text of article 14 as it appears in document A/AC.261/3/Rev.1 and Corr.1.

<sup>99</sup> Proposed by Switzerland.

<sup>100</sup> Departure from the text of article 7 of the Organized Crime Convention included in the proposed text of article 14 as it appears in document A/AC.261/3/Rev.1 and Corr.1.

<sup>101</sup> Proposed by Pakistan.

<sup>102</sup> Departure from the text of article 7 of the Organized Crime Convention included in the proposed text of article 14 as it appears in document A/AC.261/3/Rev.1 and Corr.1.

<sup>103</sup> Departure from the text of article 7 of the Organized Crime Convention included in the proposed text of article 14 as it appears in document A/AC.261/3/Rev.1 and Corr.1

<sup>104</sup> Departure from the text of article 7 of the Organized Crime Convention included in the proposed text of article 14 as it appears in document A/AC.261/3/Rev.1 and Corr.1.

<sup>105</sup> Proposed by Cuba.

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.]<sup>106</sup>

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation [and technical assistance]<sup>107</sup> among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

[6. Each State Party, upon receiving information regarding a suspicious banking transaction or suspicious banking transactions, shall endeavour to take effective measures to detect the origin of the money involved in that transaction or those transactions, where possible in cooperation with other States Parties.]<sup>108</sup>

[7. Each State Party, upon receiving information indicating that certain funds are the proceeds of corruption or information regarding a person or persons involved in the commission of the predicate offence, or both, shall endeavour to take appropriate measures to apply the provisions of articles 33 [Criminalization of money-laundering of proceeds of corruption] and 62 [Return of property to the country of origin in cases of damage to state property] of this Convention, where possible in cooperation with other States Parties.]<sup>109</sup>

*[Articles 15-18 were deleted.]*

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<sup>106</sup> Proposed by the United States.

<sup>107</sup> Proposed by Pakistan.

<sup>108</sup> Proposed by Ukraine.

<sup>109</sup> Proposed by Ukraine.

### III. Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement<sup>110</sup>

#### *Article 19*<sup>111</sup>

##### *[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],<sup>112</sup> 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;

(b) The solicitation or acceptance by a public official [or a person who performs public functions],<sup>113</sup> 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*<sup>114</sup>

##### *Bribery 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 [shall adopt] such legislative and other measures as may be necessary to establish as criminal offences, when

<sup>110</sup> The delegation of the Russian Federation indicated its intention to submit to the Ad Hoc Committee a proposal that would seek to compile in three articles the relevant offences to be covered in this chapter. That proposal would be submitted for the third reading of the draft text.

<sup>111</sup> 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 distribution.

<sup>112</sup> The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft convention.

<sup>113</sup> The relevance of this addition depends on the scope of the definition of “public official” in article 2 of the draft convention.

<sup>114</sup> The text of this article (A/AC.261/L.135, as amended in document A/AC.261/L.137) incorporates comments made during that review of the revised text, as summarized by the Vice-Chairman. Some delegations expressed concerns about the potential effects of this article on expanding jurisdiction beyond that based on the principle of territoriality. Other delegations held the view that any problems of that nature could be dealt with in the appropriate article. Some delegations expressed the view that the article might not be necessary, as the conduct it intended to cover could be punished under article 19.



committed intentionally, the solicitation or acceptance by a foreign public official or an official of an international organization, directly or indirectly, of [the offer 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].]

[*The Ad Hoc Committee decided to consider article 20 as the last of the articles on criminalization.*]<sup>115</sup>

*Article 21*<sup>116</sup>  
*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.

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<sup>115</sup> 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.

<sup>116</sup> 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 distribution.

*Article 22*<sup>117</sup>  
*Embezzlement, misappropriation, [other] diversion or [misuse]*  
*of property by a public official*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation [or [other] diversion,]<sup>118</sup> [or the misuse],<sup>119</sup> by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

*Article 23*  
*Concealment*<sup>120</sup>

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,]<sup>121</sup> 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.<sup>122</sup>

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<sup>117</sup> 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 of articles 22 and 27 at the third session of the Ad Hoc Committee and coordinated by Canada. The Ad Hoc Committee did not review this text after its distribution. This revised version would entail the deletion of article 27.

<sup>118</sup> It would appear from the discussion in the informal working group that “diversion” is understood in Spanish-speaking countries as separate from “embezzlement” and “misappropriation”, while in other countries “diversion” is covered by these terms.

<sup>119</sup> “Misuse” is regarded by a number of countries to be a different and wider concept than embezzlement, misappropriation or diversion and does not meet the standard for criminalization.

<sup>120</sup> 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 from 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. A decision on this matter is to be taken after consideration of article 33.

<sup>121</sup> Proposed 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.

<sup>122</sup> 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 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.]

*Article 25<sup>123</sup>  
Illicit enrichment<sup>124</sup>*

1. Subject to its Constitution and the fundamental principles of its legal system, each State Party shall take [consider taking] the necessary measures to establish under its laws as an offence the illicit enrichment or a significant increase in the assets of a government official that he or she cannot reasonably explain in relation to his or her lawful earnings during the performance of his or her functions.

2. Among those States Parties that have established illicit enrichment as an offence, such offence shall be considered an act of corruption for the purposes of this Convention.<sup>125</sup>

3. Any State Party that has not established illicit enrichment as an offence shall [insofar as its laws permit,<sup>126</sup>] provide assistance and cooperation with respect to this offence as provided for in this Convention.<sup>127</sup>

<sup>123</sup> The text of this proposal is a revised version submitted, pursuant to a request by the Chairman, by Argentina, which coordinated an informal working group. The Ad Hoc Committee did not review this proposal after its distribution.

<sup>124</sup> The delegations of the Russian Federation, the member States of the European Union and others expressed their strong wish to delete this article. The Czech Republic proposed an article on tax evasion (A/AC.261/L.140) that was not taken up by the informal working group. The Philippines agreed to withdraw its original proposal in option 4 of article 25 (A/AC.261/3/Rev.1 and Corr.1) on the condition that subparagraph (a) of that option be moved, in amended form, to a new article, 25 bis, entitled "Plunder", for consideration by the Ad Hoc Committee during its third reading of the draft text. The proposal (A/AC.261/L.151) was not discussed in the informal working group.

<sup>125</sup> Some delegations were of the view that paragraph 2 might not be necessary.

<sup>126</sup> Many delegations were of the view that the words between brackets in paragraph 3 should be deleted.

<sup>127</sup> Many delegations were in favour of deleting paragraph 3 in its entirety.

[Article 26]<sup>128</sup>  
*Use of classified or confidential information*<sup>129</sup>

Option 1<sup>130</sup>

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper<sup>131</sup> use by a public official or a person who performs public functions,<sup>132</sup> for his or her own benefit or for that of a third party, of any kind of classified or confidential information that that official or person who performs public functions has obtained because of or in the performance of his or her functions.

Option 2<sup>133</sup>

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

(a) The improper disclosure by a public official of confidential information or documents and the use for his or her own benefit or for that of a third party of a scientific discovery or other classified or confidential information or data of which he or she has become aware by virtue of his or her functions;

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<sup>128</sup> During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations expressed their wish to retain the concept contained in this article in the draft convention. Many of them, however, expressed their preference for reflecting that concept in a revised version of article 29 and not in a separate article. Some delegations were of the view that there was no need for the establishment of a separate offence on the issue. According to those delegations, other articles (such as article 22 (Misappropriation of property by a public official)) and other national penal laws would be sufficient to cover the conduct targeted in this article.

<sup>129</sup> During the second reading of the draft text at the third session of the Ad Hoc Committee, many delegations expressed their wish to delete this article, while stating that they were not against the concept of guarding against misuse of information by public officials. The Vice-Chairman with responsibility for this chapter of the draft convention asked the delegations of Algeria, Colombia and Mexico to engage in consultations with a view to producing a consolidated draft text in order to facilitate a decision of the Ad Hoc Committee on whether to retain this article. Pending the production of that consolidated text, the Vice-Chairman proposed to place the existing text in square brackets. Lack of time prevented those delegations from complying with the request of the Vice-Chairman at the third session of the Ad Hoc Committee.

<sup>130</sup> Proposed by Mexico (A/AC.261/IPM/13). During the first reading of the draft text at the first session of the Ad Hoc Committee, some delegations expressed preference for this option as the basis for further work, expressing the view that some elements of option 2, such as the identification of a period of time after separation from service, could be usefully incorporated into a subsequent revised formulation.

<sup>131</sup> Several delegations were of the view that a more appropriate word was needed.

<sup>132</sup> One delegation proposed amending this phrase to read "or any other person, as defined in article 3 of this Convention".

<sup>133</sup> Proposed by Colombia (A/AC.261/IPM/14).

(b) The improper use, for his or her own benefit or for that of a third party, by a public official who is an employee or executive or a member of a board or governing body of any public institution of information not intended for public knowledge that he or she has obtained by virtue of or in connection with his or her functions during his or her service as a public official or within two years following separation from such service.]

[Article 27 was deleted.]

[Article 28<sup>134</sup>  
*Improper benefits*<sup>135</sup>

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 29<sup>136</sup>  
*Other criminal offences*<sup>137</sup>

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.]

<sup>134</sup> 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 distribution.

<sup>135</sup> During the first and 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.

<sup>136</sup> Proposed by the Philippines (A/AC.261/IPM/24).

<sup>137</sup> 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 an 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.

*Article 30*<sup>138</sup>

*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 31 was deleted.*]

*Article 32*<sup>139, 140</sup>

*Criminalization of corruption in the private sector*<sup>141</sup>

Option 1<sup>142</sup>

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of business activity:<sup>143</sup>

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<sup>138</sup> The text of this article was derived from proposals made by Algeria (A/AC.261/L.95) and by Australia, Botswana, Cameroon, Canada, New Zealand and the United Kingdom (A/AC.261/L.137) at the third session of the Ad Hoc Committee for the inclusion of an article 30 bis. The text of those proposals mirrored the text of article 6 of the Organized Crime Convention. It was retained so that it could be considered further at the fourth session of the Ad Hoc Committee, in conjunction with article 20. Austria and the Netherlands also made a proposal for a new article 30 (A/AC.261/L.119).

<sup>139</sup> During the first reading of the draft text at the first session of the Ad Hoc Committee, most delegations indicated that the future convention would be incomplete without a provision addressing private sector corruption and advocated inclusion of this article, as it addressed a crucial matter of special relevance in the era of globalization, with ramifications for an increasing number of spheres of economic and social activity. All those in favour of inclusion expressed their preference for option 1, enhanced, however, with some elements from option 2, such as the concept of harm. Some delegations expressed serious misgivings about the feasibility of efforts to introduce an international obligation for criminalization in this area. While recognizing the importance of the issue of private sector corruption, those delegations expressed concern about the potential of a provision such as this to interfere with normal economic activity through the application of criminal law. Some delegations suggested that efforts to arrive at common ground might be based on the introduction of the concept of protection of the public interest. In any event, further deliberations were deemed necessary on the concept of private sector corruption, as well as on the meaning of the term "private sector" and the shifting relationships between the private and the public sectors. It was also pointed out that this discussion would be related to the discussion on the definition of the term "public official".

<sup>140</sup> The Ad Hoc Committee decided to carry out a second reading of articles 32-39 at its fourth session.

<sup>141</sup> During the first reading of the draft text at the first session of the Ad Hoc Committee, one delegation suggested that the title should read "Criminalization of corruption by the private sector".

<sup>142</sup> Proposed by Austria and the Netherlands (A/AC.261/IPM/4). At the first session of the Ad Hoc Committee, the authors revised their proposal and indicated that this article should be placed after article 19 bis, while paragraph 2 should be considered in conjunction with the article on complicity.

<sup>143</sup> Pakistan proposed the addition of the words "that affects public interest".

(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.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with paragraph 1 of this article.

Option 2<sup>144</sup>

Each State Party shall take such measures as may be appropriate to deter and combat corruption in the private sector. To that end, each State Party shall, inter alia, establish as criminal offences the following conduct:

(a) The solicitation or acceptance by any natural person who works or provides services in entities of the private sector, directly or indirectly, of an undue advantage, for himself or herself or for another person, in order that such person act or refrain from acting in the exercise of his or her obligations in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector; and

(b) The intentional promise, offering or giving to a natural person who works or provides services in entities of the private sector, directly or indirectly, of any article of monetary value or other undue advantage, for himself or herself or for another person or entity, as a gift, favour, promise or advantage, in exchange for which that person performs or fails to perform any act in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector.

*Article 33*

*Criminalization of money-laundering of proceeds of corruption*<sup>145</sup>

Option 1<sup>146</sup>

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) The acquisition, possession or use of property, knowing, at the moment such property is received, that it is the proceeds of crime;

<sup>144</sup> Proposed by Mexico (A/AC.261/IPM/13).

<sup>145</sup> During the first reading of the draft text, some delegations proposed to amend the title of this article to read "Criminal acts related to corruption".

<sup>146</sup> Proposed by Mexico (A/AC.261/IPM/13).

(b) The administration, custody, disposal, exchange, conversion, deposit, surrender as a surety, transport, transfer, investment, alteration or destruction of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(c) The concealment or disguise of the true nature, source, location, disposition, movement, destination or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, authorizing and counselling the commission of any of the offences established in accordance with this article;

(e) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall include as predicate offences, as a minimum, the offences established in accordance with article [...] [Criminalization of corruption] of this Convention;

(b) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(c) For the purposes of paragraph 1 of this article, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; and

(e) When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.



Option 2<sup>147</sup>

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;<sup>148</sup>

(b) Each State Party shall include as predicate offences all offences established in accordance with this Convention;<sup>149</sup>

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

<sup>147</sup> Proposed by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, most delegations expressed their support for this option.

<sup>148</sup> During the first reading of the draft text, some delegations expressed concern about the broad range of predicate offences envisaged by this paragraph as drafted. Those delegations held the view that only serious predicate offences should be covered. Some other delegations expressed their preference for a broad range of predicate offences.

<sup>149</sup> The text of this subparagraph appeared previously as paragraph 3 of option 1, which was a proposal submitted by Austria and the Netherlands. During the first reading of the draft text, Austria and the Netherlands proposed the inclusion of this sentence in the proposal of Colombia. Colombia agreed with this proposal. Consequently, Austria and the Netherlands withdrew the proposal contained in option 1.

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.<sup>150</sup>

*Article 34*<sup>151</sup>  
*Account offences*

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

(a) Creating or using an invoice or any other accounting document or record containing false or incomplete information;

(b) Unlawfully omitting to make a record of a payment.

[Articles 35 and 36 were deleted.]

*Article 37*<sup>152</sup>  
*Criminalization of obstruction of justice*

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

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention.

2. Nothing in this article shall prejudice the right of States Parties to have legislation that protects other categories of public official.

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<sup>150</sup> With regard to the criminalization of money-laundering, France proposed the wholesale incorporation of all the relevant provisions of article 6 of the Organized Crime Convention. France held the view that the proposal submitted by Austria and the Netherlands could therefore be supplemented by the inclusion of the provisions of article 6, paragraph 2, of that instrument.

<sup>151</sup> Proposed by France (A/AC.261/IPM/10). During the first reading of the draft text, some delegations raised the issue of the need for sanctions other than criminal sanctions to be included in order to give meaning to the article. Some delegations pointed out the relationship of this article with article 12 and suggested either combining article 34 with that article or deleting article 34.

<sup>152</sup> Proposed by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

*Article 38*  
*Liability of legal persons*

Option 1<sup>153</sup>

1. Each State Party shall take such measures as may be necessary, in accordance with fundamental principles of its domestic law, to establish the liability of legal persons for participation in the crimes set forth in articles [...] [articles on criminalization] of this Convention.

2. In accordance with the fundamental principles of the domestic law of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Option 2<sup>154</sup>

1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to establish the liability of a legal person situated in its territory or constituted in accordance with its legislation, when a person liable for its conduct or control commits, in such capacity, an offence set forth in this Convention. Such liability may be criminal, civil or administrative.

2. The liability referred to in the preceding paragraph shall be incurred without prejudice to the criminal liability of the natural persons who allegedly committed the offences.

3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with paragraph 1 of this article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary sanctions.

Option 3<sup>155</sup>

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

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<sup>153</sup> Proposed by Austria and the Netherlands (A/AC.261/IPM/4).

<sup>154</sup> Proposed by Mexico (A/AC.261/IPM/13).

<sup>155</sup> Proposed by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, most delegations expressed their preference for this option, as it was taken from the Organized Crime Convention and therefore contained already agreed language.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Option 4<sup>156</sup>

Each State Party shall take the penal, legislative or administrative measures necessary in compliance with principles of its domestic law, concerning legal persons, in the event that they contribute to the commitment of crimes set forth in article [...] [Criminalization of corruption] of this Convention.

Option 5<sup>157</sup>

1. Each State Party shall adopt measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes such as plunder and for the other offences established in accordance with articles [...] [articles on criminalization] of this Convention.

2. Subject to the legal principles of the State Party, the liability of the legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural or juridical persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions.

5. Each State Party shall take the necessary measures to allow heads and other responsible officials of businesses who have knowledge of or consented to the crime or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud.

*Article 39<sup>158</sup>*  
*Specialized authorities*

Each State Party shall take such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption. They shall have the necessary independence, in accordance with fundamental principles of the domestic law of the State Party, to be able to carry out their functions effectively and free from any undue pressure. Each State Party shall ensure that the staff of such entities has adequate training and financial resources to carry out their tasks.

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<sup>156</sup> Proposed by Turkey (A/AC.261/IPM/22).

<sup>157</sup> Proposed by the Philippines (A/AC.261/IPM/24).

<sup>158</sup> Proposed by Austria and the Netherlands (A/AC.261/IPM/4). During the first reading of the draft text, it was agreed to review this article in conjunction with article 40.