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Ad Hoc Committee for the Negotiation of a Convention against Corruption

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Agenda item 3

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

Proposals and contributions received from Governments

Austria, Chile, Colombia, Egypt, Mexico, Netherlands, Norway, Peru and Turkey: amendments to chapter VII

In order to facilitate the discussion in the plenary, the text presented below has been compiled from the following documents containing proposals for provisions in chapter VII (Mechanisms for monitoring implementation): A/AC.261/IPM/13, arts. 26 and 27; A/AC.261/IPM/14, arts. 34 and 35; A/AC.261/IPM/22, art. 24; A/AC.261/L.69; A/AC.261/L.78; A/AC.261/L.83; A/AC.261/L.87 and A/AC.261/L.157. In substance, however, all elements of the above-mentioned documents are contained in the text and continue to be supported by the delegations that submitted the original proposals.

“VII. Mechanisms for monitoring implementation

“Article 76

“Conference of the Parties to the Convention

“1. A Conference of the Parties to the Convention is hereby established to improve the capacity of [and cooperation between]¹ States Parties to [prevent and]¹ combat [and eradicate]² corruption and to promote and review the implementation of this Convention [through a systematic follow-up programme].²

¹ Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/L.69).

² Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).



“2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. [Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party provided that it is supported by at least one third of the Parties.]¹

“3. [At its first meeting],¹ the Conference of the Parties shall [by consensus agree upon and]¹ adopt rules of procedure and rules governing the activities set forth in paragraph[s]² [and 6]³ of this article (including rules concerning payment of expenses incurred in carrying out these activities).⁴

“4. The Conference of the Parties shall [agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including]:^{2, 3}

“[(a) Facilitate [Facilitating] activities by States Parties under articles [...] [Training and technical assistance], [...] [Other measures: implementation of the Convention through economic development and technical assistance] and [...] [Prevention] of this Convention, including by encouraging the mobilization of voluntary contributions;]^{1, 3}

“[(b) Conduct [Conducting] annual multilateral evaluations for the periodic review of the implementation of this Convention;]²

“[(c) Make [Making] recommendations to improve [this Convention and]⁵ its implementation;²

“[(d) Facilitate [Facilitating] the exchange of information among States Parties [on patterns and trends in corruption and on successful practices for combating it]^{1, 3};

“[(e) Review [Reviewing] periodically the implementation of this Convention^{1, 3};

“[(f) Cooperate [Cooperating] with relevant international and regional organizations and non-governmental organizations^{1, 3};

“[(g) Encourage [Encouraging] the mobilization of voluntary contributions to finance the systematic follow-up programme;] and²

“[(h) Promote [Promoting] the establishment of a fund to assist least developed countries in the implementation of this Convention].²

“5. Each State Party shall provide the Conference of the Parties with [the]² information [that it requires for the systematic follow-up programme concerning]² [on]³ its programmes, plans, [and] practices [and results],² as

³ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

⁴ Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/L.69, art. 66, para. 3 (with brackets)) and by Colombia (A/AC.261/IPM/14, art. 34 (without brackets)).

⁵ Text consolidated from the proposals submitted by Austria and the Netherlands (A/AC.261/L.69) and by Colombia (A/AC.261/IPM/14).

well as information on legislative and administrative measures adopted to implement this Convention [, as required by the Conference of the Parties].^{2, 6}

“6. For the purpose of paragraphs 4 (c) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.³

“7. The United Nations and its specialized agencies, as well as any State not Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by the Convention and has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.¹

*“Article 76 bis
“Subsidiary body”¹ [Technical body]”*

“Option 1

“1. States Parties shall establish an organ authorized for the required supervision and review of the effective implementation of this Convention.⁸

“Option 2

“1. The Conference of the Parties to the Convention shall establish any subsidiary body it deems necessary for the effective implementation of the Convention.⁹

“Option 3

“1. The Conference of the Parties to the Convention shall have, as subsidiary bodies, two committees, one for evaluation and the other for cooperation and technical assistance, whose functions shall be established at the first meeting of the Conference of the Parties.¹⁰

“Option 4

“1. For the purpose of article [...] [Conference of the Parties to the Convention], paragraphs 4 (c) and (e), of this Convention, the

⁶ Consolidated text taken from the proposals submitted by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14).

⁷ Text taken from the proposal submitted by Chile (A/AC.261/L.157).

⁸ Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22), in which the original title proposed was “Review of the implementation of the Convention”.

⁹ Text taken from the proposal submitted by Egypt (A/AC.261/L.87).

¹⁰ Text taken from the proposal submitted by Peru (A/AC.261/L.83).

Conference of the Parties shall establish a subsidiary body that shall carry out the functions hereinafter provided.¹

“Option 5

“1. States Parties shall establish a technical body authorized to review the effective implementation of this Convention in accordance with the principles of the United Nations and based, in particular, on respect for the principle of the equality of rights and self-determination of peoples.⁷

“2. The subsidiary body shall consist of ten experts who, by their competence, impartiality and disinterestedness, will command general confidence. During their term of office they shall not hold any position or engage in any activity which could impair their impartiality in the exercise of their functions. The members of the subsidiary body shall be elected by States Parties from among their nationals and shall serve in their personal capacity. The composition of the subsidiary body shall reflect equitable geographical distribution, as well as the principal legal systems.¹

“3. The members of the subsidiary body shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.¹

“4. The initial election to the subsidiary body shall be held at the first meeting of the Conference of the Parties. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating those States Parties which have nominated them, and shall submit it to the States Parties to this Convention.¹

“5. The elections to the subsidiary body shall be held at the meetings of the Conference of the Parties. At those meetings, two thirds of the States Parties shall constitute a quorum. The persons elected to the subsidiary body shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.¹

“6. The members of the subsidiary body shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of those five members shall be chosen by lot by the Chairman of the meeting.¹

“7. If a member of the subsidiary body dies or resigns or declares that, for any other cause, he or she can no longer perform the duties of the subsidiary body, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the subsidiary body.¹

“8. The subsidiary body shall establish its own rules of procedure.¹

“9. The meetings of the subsidiary body shall normally be held at the headquarters of the Office on Drugs and Crime of the United Nations Secretariat or at any other convenient place determined by the subsidiary body. The subsidiary body shall normally meet annually. The duration of the meetings of the subsidiary body shall be determined and reviewed, if necessary, by a meeting of the Conference of the Parties, subject to the approval of the General Assembly.¹

“10. With the approval of the General Assembly, the members of the subsidiary body established under this Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.¹

“Article 76 ter

“[Reports from States concerning the implementation of the Convention]¹

“[Evaluation of the implementation of the Convention by States Parties]¹¹

“1. States Parties undertake to submit to the subsidiary body, through the Secretary-General of the United Nations, reports containing information on their programmes, plans and practices, as well as legislative and administrative measures to implement this Convention.¹

“2. The first report shall be submitted to the subsidiary body within two years of the entry into force of the Convention for the State Party concerned. Thereafter reports shall be submitted every five years.¹

“3. States Parties that have submitted a comprehensive initial report to the subsidiary body need not, in their subsequent reports submitted in accordance with paragraph 2 of this article, repeat basic information previously provided.¹

“4. States Parties that have submitted a report to a regional or subregional organization containing the information referred to in paragraph 1 of this article may use elements of that report for the report they undertake to submit to the subsidiary body.¹

“5. The subsidiary body shall accept observations submitted to it by civil society organizations and may take into consideration such observations.^{1, 7}

“6. The subsidiary body may request from States Parties further information relevant to the implementation of the Convention.¹

“7. The activity of the technical body shall be directed towards supporting the decisions of the Conference of the Parties to the Convention and furnishing information of value in the accomplishment of the latter’s mission.⁷

¹¹ Text taken from the proposal submitted by Norway (A/AC.261/L.78).

“Organization of the evaluation process”¹¹

“8. The evaluation process shall be carried out regionally, in Africa, America, Asia, Europe and Oceania.¹¹

“9. The States Parties of each region shall appoint a bureau, which shall assist the subsidiary body of the Conference of States Parties in the evaluation process.¹¹

“10. Each State Party shall appoint a delegation to their regional bureau, consisting of not more than two persons.¹¹

“11. The [subsidiary body of the] Conference of States Parties shall determine appropriate guidelines for the work of the bureaux, including the number of sessions to be held each year.¹¹

“12. The subsidiary body of the Conference of States Parties shall coordinate the work of the five bureaux and ensure that procedures and the level of monitoring are uniform in the different regions. The subsidiary body of the Conference of States Parties shall always be present and participate in the evaluation of a State Party by each bureau.¹¹

“13. The evaluation of a State Party shall be led by two representatives of two other States Parties, in addition to the representative of the subsidiary body of the Conference of States Parties and at least two representatives of the respective regional bureau.¹¹

“14. The representatives shall, during their visit to a State Party for the purpose of performing an evaluation, enjoy privileges and immunities as diplomatic staff in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961.¹¹

“15. The evaluation process shall be divided into two phases.¹¹

“16. To the extent possible and appropriate, reports made by other international and extensive monitoring mechanisms shall be utilized in the evaluation process in order to avoid any unnecessary duplication of effort.¹¹

“Phase I of the evaluation process”¹¹

“17. The first phase of the evaluation process shall have as its primary objective to evaluate whether the legal texts through which the States Parties implement the Convention fulfil the requirements of the Convention.¹¹

“18. The subsidiary body of the Conference of States Parties shall produce a questionnaire for the purpose of gathering information on the implementation of the Convention. The subsidiary body shall also, in cooperation with the regional bureaux, outline a set of procedural rules for the first phase of the evaluation, taking into account the provisions outlined in paragraphs 19 to 21 below.¹¹

“19. Each State Party shall reply to the questionnaire in a precise manner and ensure that its reply provides sufficient detail to enable those evaluating the implementation of the Convention to assess the degree of compliance of that State Party. The replies should be provided in one of the official languages

of the United Nations and shall be circulated to all the participants in the bureau and the subsidiary body of the Conference of States Parties.¹¹

“20. The subsidiary body of the Conference of States Parties and the bureau may, if necessary, require the State Party to provide additional information.¹¹

“21. The bureau shall, on the basis of the reply, draft a preliminary report of a maximum of six pages in length. This preliminary report shall be the basis for the examination of the State Party. The preliminary report shall, as appropriate, contain both a list of requirements and a list of recommendations.¹¹

“Phase 2 of the evaluation process”¹¹

“22. The second phase of the evaluation process shall have as its primary objective to study the structures put in place to enforce the laws implementing the Convention and to assess their application. The phase 2 process may commence, if necessary, before the phase 1 examinations of all States Parties have been completed.¹¹

“23. The subsidiary body of the Conference of States Parties shall, in cooperation with the bureaux, produce a questionnaire for phase 2. The subsidiary body of the Conference of States Parties shall also, in cooperation with the bureaux, outline a set of procedural rules for the second phase of the evaluation, to include terms of reference for on-site visits, taking into account the provisions of paragraphs 24 to 29 below.¹¹

“24. The phase 2 questionnaire sent to each State Party shall take account of the results of the evaluation carried out in phase 1 in order to follow up on issues identified in that review. Each State Party shall reply to the questionnaire in a precise manner and ensure that their reply provides sufficient detail to enable those evaluating the implementation of the Convention to assess the replies of the State Party. The time limit for the State Party to be examined shall be fixed by the bureau, in consultation with the country concerned.¹¹

“25. The replies should be provided in one of the official languages of the United Nations and shall be circulated to all participants in the regional bureau and the subsidiary body of the Conference of States Parties. The subsidiary body of the Conference of States Parties and the regional bureau may, if necessary, require the State Party to provide additional information.¹¹

“26. Unless sufficient material is deemed to be available through other international and extensive monitoring mechanisms, the bureau shall make on-site visits to the States Parties. The duration of each visit should be approximately 3-5 days and the visit shall be carried out in accordance with the predetermined terms of reference.¹¹

“27. During such visits, participants in the bureau shall meet with such government and other agencies as they deem appropriate. These may include the police, magistrates, tax authorities, ministries, national auditors, civil society representatives and representatives of the private sector.¹¹

“28. The State Party shall facilitate such visits.¹¹

“29. The bureau shall make a preliminary report based on the information provided both in the questionnaire and during the visit. The bureau shall examine the preliminary report and make a final report after the concerned State Party has provided its comments. The final report shall, as appropriate, consist of both requirements and recommendations.”¹¹

“Summary reports and measures”¹¹

“30. The provisions of paragraphs 31 to 33 shall pertain equally to both phases of the evaluation process.”¹¹

“31. The Conference of States Parties shall make a summary report of the evaluations carried out each year and submit the summary report to the General Assembly.”¹¹

“32. If a State Party does not meet the requirements of the bureau within a time limit determined by the subsidiary body of the Conference of States Parties, the bureau shall propose appropriate measures to the Conference of States Parties, which shall take a decision on the matter. These measures may be positive, such as targeted technical assistance, or negative, such as suspension of the State Party from the Convention. The State Party may request an extension to the time limit, provided that a reasonable explanation for the request is given.”¹¹

“33. The subsidiary body of the Conference of States Parties shall establish procedural rules for such measures, taking into account the fair and equal treatment of all States Parties. These procedural rules shall be subject to the approval of the Conference of States Parties.”¹¹

“34. The subsidiary body shall submit to the Conference of the Parties reports on its activities before each meeting of the Conference. Such reports should, inter alia, provide an assessment of each State Party report submitted to it, including recommendations for action to further strengthen the implementation of the Convention.”¹

“35. The reports on each State Party and the summary report described in paragraph 31 shall be made available to the public.”¹¹

“36. States Parties shall make their reports widely available to the public in their own countries.”¹

“Article 77”⁶

“Secretariat”

“1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention [and to the subsidiary body].”^{1, 12}

“2. The secretariat shall:

“(a) Assist the Conference of the Parties in carrying out the activities set forth in article [...] [Conference of the Parties to the Convention] of this

¹² The text proposed by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14) are identical, as also the text proposed by Austria and the Netherlands (A/AC.261/L.69).

Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;¹³

“(b) Upon request, assist States Parties in providing information to [the Conference of the Parties as envisaged in article [...] [Conference of the Parties to the Convention], paragraph 5]¹³ [the subsidiary body as envisaged in article [...] [Reports from States concerning the implementation of the Convention]]¹ of this Convention;¹³

“(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations;¹³

“(d) Assist the subsidiary body in carrying out the activities set forth in article [...] [subsidiary body] of this Convention and make arrangements and provide the necessary services for the meetings of the subsidiary body;¹

“(e) Upon request, assist States Parties in implementing the Convention through economic development and technical assistance as envisaged in article [...] [Other measures: implementation of the Convention through economic development and technical assistance];¹

“(f) Offer training courses and technical assistance in improving national anti-corruption strategies; and¹

“(g) Perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties, in particular with regard to the collection of publicly accessible documentation relating to national and international anti-corruption measures.^{1”}

¹³ The texts proposed by Mexico (A/AC.261/IPM/13) and by Colombia (A/AC.261/IPM/14) are identical.