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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

Addendum

IV. Promoting and strengthening international cooperation

[Article 50 bis¹

International cooperation

States Parties shall cooperate in criminal matters in accordance with articles [...] [Extradition], [...] [Transfer of sentenced persons], [...] [Mutual legal assistance], [...] [Transfer of criminal proceedings], [...] [Law enforcement cooperation], [...] [Joint investigations] and [...] [Special investigative techniques] and shall assist each other, to the extent possible under their domestic legal system, in investigations into administrative offences, as well as in civil and administrative proceedings.]

¹ The insertion of this article was proposed by Cameroon, Mexico, the Netherlands and Thailand following the second reading of the draft text of this chapter, at the fourth session of the Ad Hoc Committee, at the request of the Vice-Chairman with responsibility for this chapter of the draft convention (A/AC.261/L.164). The Ad Hoc Committee did not have an opportunity to review this text after its submission.



Article 51
Extradition

1. This article shall apply to the offences covered by this Convention [established by the States Parties in accordance with this Convention], where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.²

[1 bis. Notwithstanding the provisions of paragraph 1 of this article, States Parties whose law so permits may request the extradition of a person for any of the offences established in articles [...] of this Convention that are not punishable under the domestic law of the requested State Party.]³

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of those offences.⁴

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. [For purposes of extradition none of the offences set forth in this Convention shall be considered a political offence.]⁵

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has

² During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed the view that “dual criminality” might not be required in the future convention if it was sufficiently clear which offences would be covered. That position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

³ This proposal was made by Colombia during the second reading of the draft text, at the fourth session of the Ad Hoc Committee. The Ad Hoc Committee did not have an opportunity to review this proposal after its submission.

⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed the view that, while the notion of “serious crime” had relevance for and had been defined in the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, the “Organized Crime Convention”), it might not be appropriate in the context of the present draft convention. This position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee, when many delegations recommended the deletion of this paragraph. Other delegations suggested that the paragraph should be retained after being reformulated to correspond more to the needs of this convention.

⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, most delegations proposed that the text in square brackets be retained. Some delegations wished to retain the square brackets, expressing the view that it was premature to remove them because the offences to be covered by the future convention had not been defined. In the view of some delegations, the text in square brackets would bring this paragraph in conflict with paragraph 14 of this article. It was pointed out, however, that there was no such conflict, because the text in square brackets intended to refer to the nature of the offence, while paragraph 14 referred to the motivation of the request for extradition.

no extradition treaty, it may [shall] consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.⁶

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.⁷

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 52 *Transfer of sentenced persons*

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

⁶ During the first reading of the draft text, at the second session of the Ad Hoc Committee, Mexico and Colombia withdrew their proposals for article 41 (for the text, see A/AC.261/3 (Part II), options 1 and 2, respectively). Mexico did so on the understanding that paragraph 4 would be moved to article 40, that paragraph 5 would be moved to an appropriate article under chapter IV on promoting and strengthening international cooperation and that paragraph 6 would become paragraph 14 bis of article 51. The delegation of Egypt proposed a new version of article 41 (A/AC.261/L.49). However, in view of the withdrawal of the proposals of Mexico and Colombia and the subsequent deletion of the article, Egypt indicated that it would not insist on its proposals unless the Ad Hoc Committee returned to the matter at a later stage.

⁷ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph. Many delegations expressed a strong preference for its retention, as it corresponded to a provision of the Organized Crime Convention that included corruption as one of the offences to be established.

Article 53
*Mutual legal assistance*⁸

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations,⁹ prosecutions and judicial proceedings in relation to the offences covered by this Convention.¹⁰

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article [...] [Liability of legal persons] of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

⁸ During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations raised the issue of whether the term “mutual legal assistance” was sufficient, especially in languages other than English, to capture the scope of the assistance to be provided. It was suggested that a broader term, which would not imply assistance in criminal matters only, might be found. In this connection, Colombia and Mexico proposed that the phrase “mutual legal assistance” be translated in Spanish as “asistencia jurídica recíproca”. During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Colombia and Mexico stated that the Spanish text should have been reproduced as submitted, using the term “asistencia jurídica recíproca”. Spain pointed out that the issue was not linguistic but substantive, as it related to the scope of the assistance.

⁹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, it was suggested that the text of the Organized Crime Convention would be preferable. Several delegations were attracted to the idea of introducing a separate article to cover assistance that might be provided in non-criminal matters, in view of the nature of the convention (see article 50 bis above).

¹⁰ Regarding the formulation to express the scope of the assistance, consistency with paragraph 1 of article 51 would need to be assured, once a decision had been reached on whether the text in square brackets contained in that paragraph would be deemed preferable.

[(j) Identifying, freezing and tracing funds of illicit origin derived from acts of corruption;

(k) Returning such funds to their countries of origin.]]¹¹

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.¹²

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.¹³

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.¹⁴

¹¹ Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed doubt as to whether these subparagraphs should be included in this article. This position was reiterated during the second reading of the draft text, at the fourth session of the Ad Hoc Committee.

¹² During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph.

¹³ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph.

¹⁴ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, one delegation expressed concern about the wording of this paragraph.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority [or authorities] that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed

to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult

with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, public order (*ordre public*) or other essential interests;¹⁵

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress in its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State

¹⁵ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, several delegations suggested the deletion of the words “or other essential interests”. Other delegations suggested retaining the subparagraph in its current form, which was identical to the text of the Organized Crime Convention, for reasons of consistency and supplementing it with the interpretative note from the *travaux préparatoires* of that Convention in order to reproduce the same understanding expressed in that note. One delegation recalled that the formulation of this subparagraph was identical to the text of the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex).

Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.¹⁶

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 54

Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration

¹⁶ The *travaux préparatoires* should indicate that many of the costs arising in connection with compliance with requests under article 53, paragraphs 10, 11 and 18, would generally be considered extraordinary in nature. Further, the *travaux préparatoires* should indicate the understanding that developing countries might encounter difficulties in meeting even some ordinary costs and should be provided with appropriate assistance to enable them to meet the requirements of this article.

of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 55

Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention.¹⁷ Each State Party shall, in particular, adopt effective measures:¹⁸

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity,¹⁹ whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(c bis) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit crimes covered by this Convention, including the use of false identities, forged, altered or false documents and other means of hiding activities;²⁰

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts,

¹⁷ Regarding the formulation to express the scope of the assistance, consistency with paragraph 1 of article 51 would need to be assured, once a decision had been reached on whether the text in square brackets contained in that paragraph would be deemed preferable.

¹⁸ Following the second reading of the draft text at the fourth session of the Ad Hoc Committee, the Russian Federation proposed to add the following new paragraph after paragraph 1 (A/AC.261/L.170):

“[...] In cases of incompatibility in the formulation of definitions of offences in respect of which legal assistance is requested, States Parties shall proceed not from the specific formulations contained in the relevant articles of their criminal law defining acts as offences, but from the fundamental nature (fundamental elements) of the offences covered by this Convention.”

¹⁹ The *travaux préparatoires* should indicate that the term “identity” would be understood broadly to include such features or other pertinent information as might be necessary to establish a person’s identity.

²⁰ The *travaux préparatoires* should indicate that this subparagraph does not imply that the type of cooperation described therein would not be available under the Organized Crime Convention.

including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.²¹

Article 56
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

²¹ During the second reading of the draft text, at the fourth session of the Ad Hoc Committee, Chile proposed to add a new article after article 55 to read (A/AC.261/L.157 and Corr.1):

“Article [...]

*“Jurisdiction and cooperation with regard to offences of corruption
committed through the use of computer technology*

“1. In cases in which offences covered by this Convention were committed through the use of computerized data-processing systems, computer programs or the Internet, the States Parties in which the computer equipment or the servers are located shall endeavour to extend their jurisdiction in conformity with the provisions of article 50, paragraph 5, of this Convention.

“2. Likewise, with a view to ensuring compliance with the provisions of paragraph 1 of this article and article 53 of this Convention, the Parties shall endeavour to provide mutual legal assistance, for which purpose they may take over the systems concerned in order to establish such communications as may be necessary, employing whatever security measures may be warranted by each case.”

*Article 57²²**Other cooperation measures*

1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing corruption. In particular, each State Party may adopt effective measures and mechanisms:

(a) To exchange information with other States Parties about institutions, officials and other persons concerned with the fight against corruption, which may be distributed and circulated to States so requesting;

(b) To compile and share analytical experiences in the fight against corruption at the bilateral level and through subregional, regional and international organizations and agencies.²³

[Paragraph 2 was deleted.]

3. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and, whenever possible, with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

[Paragraph 4 was deleted.]

5. States Parties shall cooperate with one another, in accordance with their domestic law, for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability, where appropriate, in cases of offences covered by this Convention.

6. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and fighting corruption, where appropriate, in promoting ethics and transparency in public administration.

7. States Parties shall endeavour to support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially those aimed at developing countries, with a view to implementing this Convention.²⁴

*Article 58**Bank secrecy*

[Following the second reading of the draft text at the fourth session of the Ad Hoc Committee, the Vice-Chairman with responsibility for this chapter established an informal working group, coordinated by the United States, to produce a revised text

²² This revised text was submitted by Peru at the fourth session at the request of the Vice-Chairman with responsibility for this chapter of the draft convention, following the second reading of the draft text. The Ad Hoc Committee did not have the opportunity to review the revised text after its submission.

²³ Some delegations indicated that paragraph 1 could be moved to article 73.

²⁴ During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the wording of this paragraph should not be obligatory.

of this article. The informal working group had not completed its work at the time of submission of this document.]

Article 59

Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating corruption, as well as for their admissibility in court.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or proceeds to continue intact or be removed or replaced in whole or in part.